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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

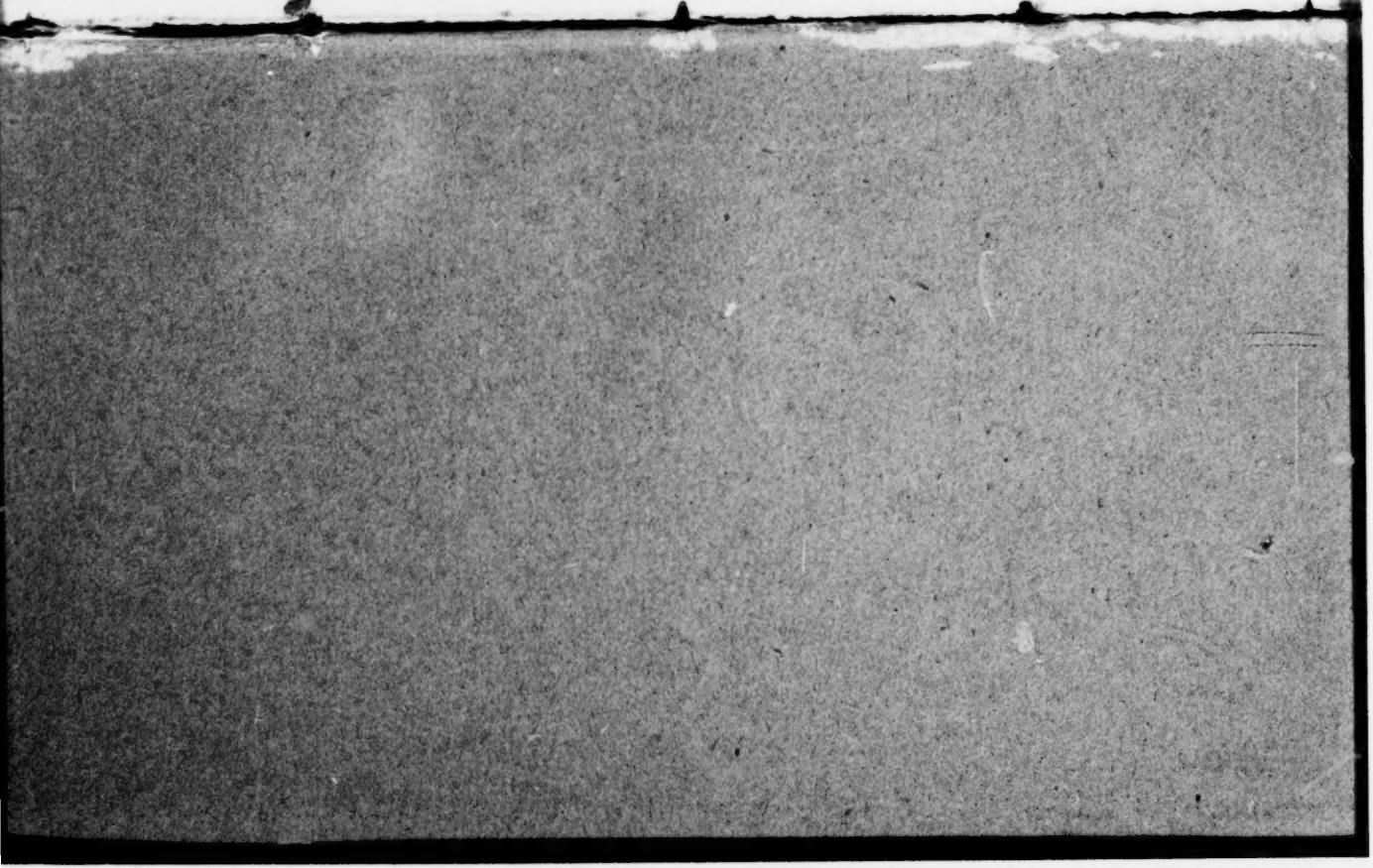
vs.

DAVID G. BAIRD, FRED F. CHAMBERS, GEORGE O. WATERMAN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 29, 1903.

(19060.)



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1 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

WILLIAM RANDOLPH HEARST, PETITIONER and complainant,
against
PHILADELPHIA & READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, defendants.

Before the Interstate Commerce Commission.

Upon the annexed petition of the Interstate Commerce Commission, sufficient reason appearing therefor,

On motion of Henry L. Burnett, United States attorney for the southern district of New York,

It is ordered that George F. Baer, Eben B. Thomas, William H. Truesdale, E. B. Sturges, E. C. Hebbard, Samuel T. Peters, W. R. Taylor, W. G. Brown, G. O. Waterman, David G. Baird, G. A. Richardson, Fred F. Chambers, and R. D. Rickard, be and each of them is hereby commanded to appear before the circuit court of the United States for the southern district of New York, at a term of the said court to be held in room 124, in the post-office building, in the borough of Manhattan, city of New York, on the 10th day June, 1903, at 12 o'clock noon, and show cause, if any there be, why said petition of the Interstate Commerce Commission should not be in all respects granted, and why an order, or orders, should not be made requiring each of said persons to appear before said Commission and make full answer to each of the questions respectively refused to be answered by said persons, and requiring each of said persons to produce before said Commission the books, papers, and documents referred to and described in the said petition, and refused to be produced as in said petition set forth.

Dated New York, June 2nd, 1903.

E. HENRY LACOMBE,
U. S. C. J.

2 Circuit Court of the United States, Southern District of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

To the honorable judges of the circuit court of the United States for the southern district of New York:

Now comes the Interstate Commerce Commission, represented by Henry L. Burnett, esq., United States district attorney for the southern district of New York, pursuant to the direction of the Honorable Philander C. Knox, Attorney-General of the United States, and presents this, its petition:

Your petitioner was created and established, and was duly organized and exists, pursuant to, and by virtue of, an act to regulate commerce, enacted by the Sen te and House of Representatives of the United States of America, approved February 4, 1887, as amended by an act approved March 2, 1889, and by an act approved February 10, 1891, and by an act approved February 8, 1895, and as amended or supplemented by an act approved February 11, 1893, and by an act approved February 19, 1903.

On November 5, 1902, the petition and complaint of William Randolph Hearst against the Philadelphia & Reading Railway Company, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, was received by your petitioner and filed in its office. A copy of said petition and complaint is hereto annexed marked "Exhibit A" and made a part hereof. A copy of said petition and complaint was forthwith forwarded by your petitioner to each carrier in said complaint named, for satisfaction or answer within fifteen days of November 5, 1902. Thereafter each of the carriers named in the said complaint made answer thereto and said answers were duly filed by your petitioner in its office. A copy of each of said answers, except the answers of the Lehigh Valley Railroad Company, New York, Ontario & Western Railway Company, and Baltimore & Ohio Railroad Company, which denied all the material allegations of the petition, except the jurisdiction of your petitioners, marked Exhibit "B," "C," "D," "E," "F," "G," and "H," respectively, is hereto annexed and made a part hereof.

On March 12, 1903, upon motion of said complainant, your petitioner duly ordered a hearing upon said complaint in the post-office building in the city of New York, on April 21, 1903, and duly notified each of the carriers in said complaint named that such hearing would then and there be begun.

On April 15, 1903, upon the application of the said complainant, subpœnaes were duly issued by your petitioner directed to George F. Baer, Eben B. Thomas, and William H. Truesdale, requiring each of said persons to appear before your petitioner as witnesses on the part of the

complainant upon said hearing, and, as your petitioner is informed and believes, each of said witnesses was duly served with said subpœnaes.

On April 15, 1903, pursuant to the rules and practice duly adopted by your petitioner, and then in force, application in writing was duly made by said complainant to your petitioner for the issuance of subpœnaes duces tecum, returnable April 21, 1903, upon the aforesaid hearing, which said application is hereto annexed, marked Exhibit "K." After a careful consideration by your petitioner of said application, and due deliberation, said application for subpœnaes duces tecum was duly granted, and the subpœnaes, for which application was made as aforesaid, were duly issued by your petitioner, and were, as your petitioner is informed and believes, thereafter and prior to April 21, 1903, duly served upon George
3 F. Baer, W. R. Taylor, W. G. Brown, G. O. Waterman, Eben B. Thomas, David G. Baird, G. A. Richardson, William H. Truesdale, Fred F. Chambers, and R. D. Rickard.

On April 17, 1903, pursuant to the rules and practice duly adopted by your petitioner, and then in force, application in writing was duly made by said complainant to your petitioner for the issuance of subpœnaes duces tecum, returnable as to E. B. Sturges, April 24, 1903, and as to E. C. Hebbard, April 22, 1903, upon the aforesaid hearing, which said application is hereto annexed, marked "Exhibit L." After careful consideration by your petitioner of said application, and due deliberation, said application for subpœnaes duces tecum was duly granted, and the subpœnaes, for which application was made as aforesaid, were duly issued by your petitioner, and were, as your petitioner is informed and believes, thereafter and prior to the return dates thereof, duly served upon E. B. Sturges and E. C. Hebbard.

While said hearing was in progress, upon the application of the complainant's counsel, your petitioner duly issued its subpœna directed to Samuel T. Peters, requiring him to appear as a witness in said proceeding on April 30, 1903, and, as your petitioner is informed and believes, said subpœna was duly served on Samuel T. Peters prior to the return date thereof.

On April 21, 1903, at 11 o'clock in the forenoon, in room 70 in the post-office building in the city of New York, said hearing was duly begun before your petitioner then and there constituted, as follows: Martin A. Knapp, of New York, chairman; Judson C. Clement, of Georgia; James D. Yeomans, of Iowa; Charles A. Prouty, of Vermont; Joseph W. Fifer, of Illinois; all of said commissioners being present. The complainant appeared by his counsel, Clarence J. Shearn, esq.; the Philadelphia & Reading Railway Company appeared by Messrs. J. D. Campbell and Charles Heebner, as counsel; the Lehigh Valley Railroad Company appeared by Messrs. J. G. Johnson, Francis I. Gowen, and F. H. Janvier, as counsel; the Delaware, Lackawanna & Western Railroad Company appeared by W. W. Ross, esq., as counsel; the Central Railroad Company of New Jersey appeared by Messrs. DeForest Brothers and Robert Thorne, as counsel; the Erie Railroad Company and the New York, Susquehanna & Western Railway Company appeared by Messrs. George F. Brownell and Adelbert Moot, as counsel; the New York, Ontario & Western Railroad Company appeared by J. B. Kerr,

esq., as counsel; the Delaware & Hudson Company appeared by Messrs. David Wilcox and L. E. Carr, as counsel. There were no appearances for the Pennsylvania Railroad Company or the Baltimore & Ohio Railroad Company. The hearing thereupon proceeded and was continued on April 22, April 23, April 24, April 29, April 30, and May 1, 1903.

At the hearing on April 22, 1903, complainant's counsel called upon the Lehigh Valley Coal Company to produce all contracts for the purchase and transportation of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal, or owners or operators of anthracite coal mines, for the purpose of offering such contracts in evidence, and stated, at the request of counsel for the Lehigh Valley Railroad Company, wherein it was claimed that said contracts were material and relevant to the matters under investigation. Counsel for the Lehigh Valley Railroad Company stated that a subpœna duces tecum, calling for the production of such contracts, had been duly served upon David G. Baird, the secretary of the Lehigh Valley Coal Company, but that counsel for the Lehigh Valley Railroad Company objected to the production of said contracts. In response to a question by Commissioner Prouty, counsel for the Lehigh Valley Railroad Company stated: "The Lehigh Valley Railroad Company owns all the stock of the Lehigh Valley Coal Company under the statutes of Pennsylvania" (S. M., p. 185), but declined to produce the said contracts on the grounds that they were immaterial and irrelevant and were contracts between parties who were not parties to the proceeding. Complainant's counsel requested your petitioner to direct the production of said contracts. A copy of one of said contracts in blank was submitted to your petitioner for examination. After examination of the contract your petitioner announced its decision as follows:

"The Chairman: During the recess the Commission has briefly examined the blank contract which was submitted to our inspection by the courtesy of counsel. We understand from counsel that all the stock of the Lehigh Valley Coal Company, which is denominated the buyer in this contract, is owned by the Lehigh Valley Railroad Company, and it appears from an inspection of the contract that the prices paid to the seller are certain percentages of the prices for which the coal is sold at tidewater terminals. If the balance retained is less than the amount paid the railroad company, the coal company sustains a loss in the transaction, which is hardly to be assumed. However this may be, the facts alleged to be contained in these contracts may properly be shown, we think, and also think that the contracts are competent evidence
4 of the fact. We therefore overrule the objection and allow the contracts to be put in evidence." (S. M., p. 193.)

* * * * * * *

"The Commission holds that the facts which you say are set forth in these contracts are competent to be shown in this proceeding, and that the contracts are competent evidence of those facts. The representatives of the parties to the contracts having them in their custody are asked to produce them and decline, making certain objections. The Commission overruled those objections, and direct the production of the contracts, and the representative of the coal company refuses to comply with that direction." (S. M., p. 200.)

Counsel for the Lehigh Valley Railroad Company then stated:

"I am perfectly willing when the question goes up to have it treated as if Mr. Baird, the secretary of the coal company, had responded to the subpœna and had stated that he had brought with him the contracts called for by the subpœna and had declined, by advice of counsel, to produce them." (S. M., p. 200.)

For greater particularity as to the refusal of David G. Baird, secretary of the Lehigh Valley Coal Company, to produce said contracts your petitioner begs leave to refer to pages 161–201, inclusive, of the stenographer's minutes of said hearing, which for the purposes of this petition are made part hereof.

At the hearing on April 22, 1903, complainant's counsel called on the Delaware, Lackawanna & Western Railroad Company to produce all contracts entered into by it for the purchase of anthracite coal subsequent to January 1, 1901. Counsel for said railroad company stated that there were such contracts, but that he objected to their production. The following proceedings then took place:

"The CHAIRMAN. You make no question but what the subpœna has been properly issued?

Mr. ROSS. The subpœna has been properly served on the secretary.

The CHAIRMAN. There is some official here who has the contracts?

Mr. ROSS. Yes, sir.

The CHAIRMAN. And for the reasons you have named you decline to produce them?

Mr. ROSS. Yes, sir.

The CHAIRMAN. Then, it comes to this. Mr. Ross, counsel for the Delaware, Lackawanna & Western, concedes that the subpœnaes were properly served; that the representative of the company has in his possession the contracts called for. He is asked to produce them and declines to do so for the reasons named by him, which are in the nature of objections to the evidence. The Commission overrules the objection and directs him to produce the contracts in order that they may be put in evidence, and he declines to do so, notwithstanding the ruling." (S. M., pp. 208–9.)

At the hearing on April 24, 1903, Fred F. Chambers was called as a witness on behalf of the complainant, and, after being duly sworn, the following proceedings took place:

"Mr. SHEARN. You are the secretary of the Delaware, Lackawanna & Western Railroad Company?

Mr. CHAMBERS. A. Yes, sir.

Mr. SHEARN. Q. Have you the custody of the contracts of the Delaware, Lackawanna & Western Railroad Company?

Mr. CHAMBERS. A. Yes, sir.

Mr. SHEARN. Q. Have you been served with a subpœna to produce the contracts for the purchase of anthracite coal by the Delaware, Lackawanna & Western Railway Company entered into since January 1, 1901?

Mr. CHAMBERS. A. Yes, sir.

Mr. SHEARN. Q. Are there any such contracts, Mr. Chambers?

Mr. CHAMBERS. A. Yes, sir.

Mr. SHEARN. Q. You have those contracts with you in court, have you?

Mr. CHAMBERS. A. They are in court.

Mr. SHEARN. Q. Please produce them.

Mr. ROSS. With the advice of counsel he will decline.

Mr. SHEARN. I ask that he be directed to produce them.

Mr. ROSS. The same direction is given and he declines.

The CHAIRMAN. The objection is overruled and the witness is required and directed by the Commission to produce the contract.

Mr. ROSS. I have also the further objection which has heretofore been suggested by other counsel that these contracts are between the railroad company and third parties who are not parties to this record. All of the objections which have heretofore been made may be considered as made here at this time.

The CHAIRMAN. Counsel objects to the production of these contracts upon any and all of the grounds that have been heretofore presented respecting this class of evidence.

Mr. SHEARN. Do you refuse to produce the contracts, Mr. Chambers?

Mr. ROSS. Under the advice of counsel, yes.

Mr. SHEARN. Q. Is that the case?

Mr. CHAMBERS. A. Yes, sir.

Comn. CLEMENTS. You brought them into court before the Commission in answer to your subpœna? They were in your possession?

Mr. CHAMBERS. A. Yes, sir.

The CHAIRMAN. You are required and directed by the Commission to produce them and you decline to do so?

Mr. ROSS. Under the same objection and under the same advice.

Mr. SHEARN. Q. You do not decline to produce them on the ground that it would incriminate you, do you?

Mr. CHAMBERS. A. I decline only on the advice of counsel." (S. M., pp. 596–601.)

On April 22, 1903, George O. Waterman was called as a witness on behalf of the complainant, and, having been duly sworn, the following proceedings took place:

"Mr. SHEARN. Q. Mr. Waterman, are you the secretary of the Central Railroad of New Jersey?

Mr. WATERMAN. A. I am.

Mr. SHEARN. Q. And have been how long?

Mr. WATERMAN. A. About two years.

Mr. SHEARN. Q. Does the Central Railroad of New Jersey operate a railroad between the anthracite mining fields in Pennsylvania and Jersey City, New Jersey?

Mr. WATERMAN. A. It does.

Mr. SHEARN. Q. And has during all the time you know anything about it?

Mr. WATERMAN. A. Yes, sir.

Mr. SHEARN. Q. A large part of its business is the transportation of anthracite coal, is it not?

Mr. WATERMAN. A. That is a very important part of it.

Mr. SHEARN. Q. Do you know of the existence of a corporation called the Lehigh and Wilkesbarre Coal Company?

Mr. WATERMAN. A. Yes, sir.
Mr. SHEARN. Q. In what State is that incorporated?
Mr. WATERMAN. A. State of Pennsylvania, I understand.
Mr. SHEARN. Q. What is the business of the Lehigh & Wilkesbarre Coal Company?
Mr. WATERMAN. A. Principally to mine and sell coal.
Mr. SHEARN. Q. Anthracite coal?
Mr. WATERMAN. A. Anthracite coal.
Mr. SHEARN. Q. Who is president of the Central Railroad of New Jersey?
Mr. WATERMAN. A. George F. Baer.
Mr. SHEARN. Q. Who is president of the Lehigh and Wilkesbarre Coal Company?
Mr. WATERMAN. A. The same gentleman.
Mr. SHEARN. Q. Are you an officer of the Lehigh and Wilkesbarre Coal Company?
Mr. WATERMAN. A. I am.
Mr. SHEARN. Q. Do you know what the capital stock of that company is?
Mr. WATERMAN. A. About $10,000,000.
Mr. SHEARN. Q. The Lehigh and Wilkesbarre Coal Company?
Mr. WATERMAN. A. About $10,000,000.
Mr. SHEARN. Q. Do you know who owns the capital stock of the company?
Mr. WATERMAN. A. The Central Railroad of New Jersey own a large portion.
Mr. SHEARN. Q. Does it not own all of it?
Mr. WATERMAN. A. No, sir.
Mr. SHEARN. Q. How many shares are owned by those other than the Central Railroad of New Jersey?
Mr. WATERMAN. A. About $1,000,000 in par value.
Mr. SHEARN. Q. How many shares are there?
Mr. WATERMAN. A. $50 is par value. It would be about 20,000 shares.
Mr. SHEARN. Q. Of the 20,000 shares, how many are owned by the Central Railroad of New Jersey?
Mr. WATERMAN. A. About nine-tenths of the total amount.
Mr. SHEARN. Q. The balance is held by persons who qualify as directors of the company?
Mr. WATERMAN. A. No; owned by the Central Railroad of New Jersey.
Mr. SHEARN. Q. I understood you to say nine-tenths of the stock is owned by the Central Railroad of New Jersey?
Mr. WATERMAN. A. Yes, sir.
Mr. SHEARN. Q. Do you know how the balance is held?
Mr. WATERMAN. A. It is held by different parties, quite a number.
Mr. SHEARN. Q. Are they directors of the Central Railroad of New Jersey?
Mr. WATERMAN. The directors hold some.

* * * * * * *

Mr. SHEARN. Q. Are there any contracts in your possession or custody entered into since January, 1901, between the Lehigh & Wilkesbarre Coal Company and third parties for the purchase of anthracite coal?

6 Mr. WATERMAN. A. There were some contracts entered into.

Mr. SHEARN. Q. How many?

Mr. WATERMAN. A. Three, as I am aware.

Mr. SHEARN. Q. Since January, 1901?

Mr. WATERMAN. A. Yes, sir.

Mr. SHEARN. Q. Do you know whether those contracts are still in existence?

Mr. WATERMAN. A. I presume they are.

Mr. SHEARN. Q. They are in your custody, are they not?

Mr. WATERMAN. A. No, sir; not at present.

Mr. SHEARN. Q. In whose custody are they?

Mr. WATERMAN. A. The last I saw of them they were handed to our counsel.

Mr. THORNE. They are in my custody now.

Mr. SHEARN. But legally they are in his custody?

Mr. THORNE. Yes, sir.

Mr. SHEARN. Q. As an officer of the Lehigh & Wilkesbarre Coal Company, you have the custody of the three contracts spoken of, have you not?

Mr. WATERMAN. A. I did have.

Mr. SHEARN. Q. You brought them here in answer to that subpœna and have just handed them to your counsel, Mr. Thorne?

Mr. WATERMAN. A. That is it.

* * * * * * *

Mr. SHEARN. Q. Please produce those contracts.

Mr. WATERMAN. A. They are not in my hands.

Mr. THORNE. Witness, under advice of counsel, declines to produce the contracts for the reason that they are not germane to any issue presented before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and they are contracts with third parties who are not parties to this proceeding and action, and are private business and should not be made public and disclosed in this proceeding. * * *

Com'r PROUTY. Is any of the stock of your coal company on the market?

Mr. WATERMAN. I never saw any sales of it through the stock exchange.

Com'r PROUTY. Is it owned by the people that own it for an investment—does it pay a dividend?

Mr. WATERMAN. No, sir.

Com'r PROUTY. How long since it paid a dividend?

Mr. WATERMAN. I do not remember. Not since I have been secretary—two years. * * *

The CHAIRMAN. We think you should be required to produce those contracts.

Mr. THORNE. And witness on the counsel's advice will decline to produce them.

The CHAIRMAN. And the Commission directs him to produce the contracts.

Mr. THORNE. I think that makes the record. * * *

Mr. SHEARN. You said you understood that the small fraction of the stock of the Lehigh & Wilkesbarre Coal Company that was not owned by the Central Railroad of New Jersey was held by bona fide investors?

Mr. WATERMAN. A. That would be the indication from the stock books. There are a large number of names spread throughout the country.

Mr. SHEARN. Q. How many names are there?

Mr. WATERMAN. A. Well, from memory, I would say 70 or 75. I may be mistaken as to the number, but I think that is about the number.

Mr. SHEARN. Q. Do you attend the annual meetings of the Lehigh & Wilkesbarre Coal Company?

Mr. WATERMAN. A. I have attended one; yes, sir.

Mr. SHEARN. Q. Did you ever see one of these 70 minority stockholders present at any meeting?

Mr. WATERMAN. A. At the only meeting I attended there was a gentleman that I understood was a stockholder, and I understood that he represented others.

For greater particularity with reference to the refusal of the witness to produce said contracts, the petitioner begs leave to refer to the stenographer's minutes of the said hearing, pages 212–230, which for the purposes of this petition are made part hereof.

At the hearing on April 22, 1903, when counsel for complainant called upon the Hillside Coal & Iron Company to produce the contracts for the purchase of anthracite coal entered into between it and third parties since January 1, 1901, counsel for the Erie Railroad Company stated that if the secretary of the Hillside Coal & Iron Company were present he would testify that that company is a corporation under the laws of Pennsylvania, lawfully engaged in the purchase and handling of coal, and has at no time made contracts for transportation; that it has in its legal capacity made purchases of coal from third parties, neither being parties to this proceeding.

Mr. SHEARN. There are to your knowledge contracts in existence for the purchase of anthracite coal entered into since January 1, 1901, between the Hillside Coal & Iron Company and third parties?

Mr. BROWNELL. Yes, sir; a number of contracts; solely for the purchase of coal.

7 Mr. SHEARN. And they are in the custody of the secretary of the Hillside Coal & Iron Company?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. And he has been duly subpœnaed to produce them?

Mr. BROWNELL. I should raise no question as to the correctness of the subpœna, but he was not subpœnaed to be present at this time. I will produce him.

Mr. SHEARN. Will you produce these contracts?

Mr. BROWNELL. You may assume for that purpose that Mr. Richardson, the secretary, is here, and counsel for the companies, as well as

counsel for the coal company, object to the introduction in evidence of those contracts upon the ground stated by other respondent companies.

* * * * * * *

Mr. SHEARN. Have you with you any contracts for the purchase of anthracite coal entered into since January 1, 1901, between the *the* Pennsylvania Coal Company and third parties?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. BROWNELL. On behalf of the secretary, in whose possession they legally are, I object to its introduction upon all the grounds stated before.

Mr. SHEARN. Have you with you any of the contracts entered into by the Hillside Coal & Iron Company with third parties?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. You have them with you in court?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Delivered to you by the secretary of the Hillside Coal & Iron Company?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. BROWNELL. Assuming that they are in the possession of the secretary or in my possession, I object to their being received in evidence upon the same grounds.

Mr. SHEARN. I ask the Commission to direct the secretary of the Hillside Coal & Iron Company and the secretary of the Pennsylvania Coal & Iron Company to produce those contracts; they are here in court.

The CHAIRMAN. Mr. Brownell, you are counsel for this Hillside Coal & Iron Company?

Mr. BROWNELL. For the Hillside Coal & Iron Company, yes, sir; I am counsel for that company.

The CHAIRMAN. Upon the statement you have just made that you have them in your possession, you are required to produce them in the case.

Mr. BROWNELL. And I respectfully decline to do so upon the grounds stated by other counsel.

For greater particularity as to the refusal of the Hillside Coal & Iron Company and Pennsylvania Coal Company to produce said contracts, petitioner begs leave to refer to pages 230–40 of the stenographer's minutes, which for the purposes of this petition are made part hereof.

At the hearing on April 22, 1903, William G. Brown was called as a witness on behalf of the complainant, and, having been duly sworn, the following proceedings took place:

Mr. SHEARN. Q. Mr. Brown, you are the secretary of the Philadelphia & Reading Coal and Iron Company?

Mr. BROWN. A. Yes, sir.

Mr. SHEARN. Q. And have been for how long?

Mr. BROWN. A. For about five years; five and a half years.

Mr. SHEARN. Q. That is a corporation organized under the laws of what State?

Mr. BROWN. A. The State of Pennsylvania.

* * * * * * *

Mr. SHEARN. Q. Who is the president of the Philadelphia & Reading Coal Company?

Mr. BROWN. A. George F. Baer.

Mr. SHEARN. Q. What business is the Philadelphia & Reading Coal and Iron Company engaged in?

Mr. BROWN. A. In the mining and sale of coal.

Mr. SHEARN. Q. What is the capital stock of the company?

Mr. BROWN. A. $8,000,000.

Mr. SHEARN. Q. Who owns it?

Mr. BROWN. A. It is owned almost entirely by the Reading Company.

Mr. SHEARN. Q. Is it not owned entirely by it?

Mr. BROWN. It is owned entirely.

Com'r PROUTY. Q. What is the Reading Company?

Mr. CAMPBELL. It is a corporation which holds the stock, as well as other investments, the stock of the Philadelphia & Reading Coal & Iron Company, the stock of the Philadelphia & Reading Railway Company——

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8 Mr. SHEARN. Mr. Brown, you, as the secretary of the Coal & Iron Co., have custody of its papers and contracts, have you not?

Mr. BROWN. A. I have; yes, sir.

Mr. SHEARN. Q. You have been served with a subpœna to produce all contracts entered into between the Philadelphia & Reading Coal & Iron Co. and third parties for the purchase of anthracite coal, since January 1, 1901, have you not?

Mr. BROWN. Yes, sir.

Mr. SHEARN. Are there such contracts in existence?

Mr. BROWN. A. There are.

Mr. SHEARN. Q. And they are in your custody?

Mr. BROWN. A. They are in the custody of the counsel of the company. I gave them to counsel of our company, in whose custody they are.

Mr. SHEARN. But they are in your lawful custody?

Mr. BROWN. A. I would have charge of them as records of the company.

Mr. SHEARN. Q. And you had charge of them when the subpœna was delivered to you?

Mr. BROWN. A. Yes, sir.

Mr. SHEARN. And since then you have delivered them to Judge Campbell, your counsel?

Mr. BROWN. A. Yes, sir; at his request.

Mr. SHEARN. Q. At his request?

Mr. BROWN. Yes, sir.

Mr. SHEARN. Q. How many of such contracts have you delivered to him?

Mr. BROWN. A. I do not remember the exact number; six, seven, or eight, possibly.

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Mr. SHEARN. Now, produce those contracts, please.

Mr. CAMPBELL. The witness is instructed to decline to produce the contracts, for the reason stated by Mr. Thorne in respect to the demand

made upon the Leigh & Wilkes-Barre Comqany, and counsel asks the stenographer to set forth in the record these reasons.

I advise the witness to decline to produce the contracts and I take it the Commission will deliver its directions as it has done in the other case.

The CHAIRMAN. By your objection you refer to what has been stated by other counsel?

Mr. CAMPBELL. By Mr. THORNE. I desire my record to be made exactly the same as Mr. Thorne's record was made, for he stated the reasons not set forth as fully by some other counsel.

The CHAIRMAN. The objections are overruled and the Commission directs the witness to produce the contracts. (After a pause.) The witness declines to do so under the advice of counsel.

For greater particularity as to the refusal of William G. Brown, secretary of the Philadelphia & Reading Coal & Iron Company, to produce said contracts, reference is made to the stenographer's minutes of said hearing, pages 243–258, which, for the purposes of this petition, are made part hereof.

At the hearing on April 24, 1903, E. B. Sturges was called as a witness on behalf of the complainant, and having been duly sworn, the following proceedings were had:

Mr. SHEARN. Q. What is your residence, Mr. Sturges?

Mr. STURGES. Scranton.

Mr. SHEARN. What is your business?

Mr. STURGES. I am interested in the Dolph Coal Company, the Clarence Coal Company, and the Pine Hill Coal Company. The two first are in the Lackawanna region and the Pine Hill is in the Schuylkill region.

Mr. SHEARN. The Dolph and Clarence——

Mr. STURGES. They are in the Lackawanna region, and the Pine Hill in the Schuylkill region.

Mr. SHEARN. What railroads reach the Dolph and Clarence companies?

Mr. STURGES. The New York, Susquehanna & Western reaches both.

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Mr. SHEARN. To what company does the Clarence sell its coal?

Mr. STURGES. To the Hillside Coal and Iron Company.

Mr. SHEARN. Under a written contract?

Mr. STURGES. Yes, sir.

Mr. SHEARN. When was that contract entered into into?

Mr. STURGES. Very recently; not over two or three months ago, or a few months ago.

Mr. SHEARN. Have you it with you?

Mr. STURGES. Yes, sir.

Mr. SHEARN. Please produce it.

Mr. STURGES. I have no objection to producing it, personally, but from what I have heard here to-day and seen in the papers that other parties have declined, I do not think I ought to produce it.

Mr. BROWNELL. That is, between what parties?

Mr. STURGES. Between the Clarence and the Hillside companies.

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9 Mr. BROWNELL. I object on behalf of the Hillside Coal & Iron Company and on behalf of clients I represent, parties to this proceeding as well.

Mr. SHEARN. Name your clients please—the Erie?

Mr. BROWNELL. I object on behalf of the Erie and on behalf of all the parties I represent, to dragging into the record in this case matters I do not deem to be relevant, material, or proper. That is the objection that has been made several times, as the Commission will understand.

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Mr. SHEARN. Here is the witness having a contract in his pocket and does not raise any objection himself. I ask that he be directed and required to produce it.

The CHAIRMAN. What is the contract?

Mr. STURGES. For the sale of coal.

The CHAIRMAN. To this Hillside coal company?

Mr. STURGES. Yes, sir.

The CHAIRMAN. And you have it with you?

Mr. STURGES. Yes, sir.

The CHAIRMAN. And you are asked to produce it?

Mr. STURGES. Yes, sir.

Mr. SHEARN. You are subpœnaed to produce it.

Mr. STURGES. I want to say that I am perfectly willing to produce it, except that other parties have objected to producing them.

Mr. SHEARN. You are a man of independence, are you not?

Mr. STURGES. I think so, but I have no counsel here.

Mr. SHEARN. You say you are a lawyer.

Mr. STURGES. No; I have not been for ten years, I am glad to say.

Mr. BROWNELL. I think he knows the question has been raised by other parties who have declined to produce them.

The CHAIRMAN. He has a perfect right to put his refusal on that ground.

Mr. STURGES. I simply feel I can not do it as a matter of honor until the other parties produce their contracts or I am compelled to. When either of these things happen I will be very glad to do so.

The CHAIRMAN. The witness has stated that such a contract as described was made and that he has it in his possession. Being asked to produce it, and put it in evidence, he declines to do so for the reasons he has stated. The Commission requires and directs him to produce the contract and he refuses.

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Mr. SHEARN. Now, the Pine Hill Company, in the Schuylkill region, how does it dispose of its product?

Mr. STURGES. We mine about half of our coal from the Philadelphia & Reading Coal & Iron Co. land.

Mr. SHEARN. Paying them a royalty?

Mr. STURGES. Yes, sir. We deliver the same quantity of coal to them, we are obliged to and want to, as we mine from their lands; we ship over their roads.

Mr. SHEARN. Under a contract?

Mr. STURGES. Yes, sir.

Mr. SHEARN. A written contract?
Mr. STURGES. Yes, sir.
Mr. SHEARN. Have you that with you?
Mr. STURGES. Yes, sir.
Mr. SHEARN. When was it entered into?
Mr. STURGES. Between two and three years ago. I did not dare to look at the date of the contract.
Mr. SHEARN. Please produce it.
Mr. STURGES. Please excuse me for the same reasons as I have stated.
Mr. SHEARN. You have been duly subpœnaed to produce it?
Mr. STURGES. Yes, sir.
Mr. SHEARN. And you have it in court?
Mr. STURGES. Yes, sir.
Mr. SHEARN. And decline to produce it.
Mr. STURGES. Yes, sir.
Mr. SHEARN. For the same reasons?
Mr. STURGES. Yes, sir.
Mr. SHEARN. I ask that the witness be directed to produce it.
The CHAIRMAN. The witness is directed and declines.

For greater particularity as to the refusal of E. B. Sturges to produce said contracts, reference is made to the stenographer's minutes of the said hearing, pages 625–38, which, for the purposes of this petition, are made part hereof.

That when said witnesses refused to produce the aforesaid contracts your petitioner was engaged, as aforesaid, at room 70 in the post-office building, New York City, in the State of New York, in the discharge of its duty to execute and enforce the provisions of said act to regulate commerce, and in the exercise of its authority to inquire into the management of the business of common carriers, subject to the provisions of said act, and to keep itself informed as to the manner and method in which said business is conducted, and to obtain from said common carriers full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created; and your petitioner is of the opinion that said contracts are not only material and relevant to the issues on trial in said proceeding, but that the production thereof as required by it, as aforesaid, is necessary to enable your petitioner to discharge its duty and execute and enforce said provisions of said act to regulate commerce and to inform your petitioner as to the manner and method in which the business of said common carriers is conducted, and to enable your petitioner to obtain the full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created.

That it appears by the evidence adduced before your petitioner in said proceeding that the said so-called coal purchase contracts are substantially identical, and that the substantial terms thereof were agreed upon at a meeting between a committee representing private anthracite coal operators and Messrs. George F. Baer, John B. Garrett, William H. Truesdale and Eben B. Thomas, said George F. Baer being the president of the Philadelphia & Reading Railway Company and of the Central Railroad Company of New Jersey, said John B. Garrett then being an offi-

cial of the Lehigh Valley Railroad Company, the said William H. Truesdale being president of the Delaware, Lackawanna & Western Railroad Company, and the said Eben B. Thomas being then the president of the Erie Railroad Company. The evidence establishes that some of the provisions of the form of contract agreed upon at said conference were as follows:

"This agreement, made and executed in the city of Philadelphia, Penn., this day , nineteen hundred , between (hereinafter called the seller), party of the first part, and (hereinafter called the buyer), party of the second part, witnesseth:

First. The seller hereby sells and agrees to deliver on cars at breaker to the buyer all the anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be conveyed by this contract, and any which shall be reclaimed from culm banks on said premises, viz:

Shipments to be made from time to time as called for by the buyer. The buyer to give on the twenty-five of each month, notice of the quantity as nearly as practicable buyer will require next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The buyer to use its best efforts to find a market for the seller's coal, so as to enable the seller's collieries to be worked as many days as practicable with due regard to the general market conditions, and to give orders for shipment which will enable the seller to work its collieries as many days in each year as other collieries work similarly situated.

The buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms, or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the president for the time being of the Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the buyer or seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The buyer agrees to pay and the seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breakers.

For all sizes above pea coal, sixty-five per cent of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

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Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the buyer shall furnish, not later than the eighth of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the buyer at tide on all sales of each size of coal from the region, and the accountant shall each month make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the buyer and seller, by whom they shall be accepted, subject to the right of appeal to the arbitration board, in the settlement between buyer and seller. All statis-
11 tics given such accountant shall be treated by him confidentially, and the resulting averages shall be given by him to buyer and seller.

It is understood that when the words f. o. b. price occur herein, the actual f. o. b. price received is meant, without any deductions for commissions, demurrage, or any other charges.

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Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1) per ton shall be made on or before the twelfth of each month and the balance on or before the twentieth for all coal delivered by the seller under this contract during the preceding calendar month.

Provided, that if default shall be made by the buyer in any payment aforesaid, the seller may, in its option, declare this contract forfeited by giving notice of such default for a period of at least five days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month, this contract may be peremptorily terminated by the seller without such notice.

* * * * * * *

Ninth. It is understood and agreed that the seller will ship to the buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the seller's mining operations and the coal retained at the breaker as hereinbefore provided) prepared according to the standard hereinafter recited, and in case any coal is condemned and rejected by the inspector on account of its preparation, the seller will reprepare the same until it conforms to the required standard.

Tenth. A ton of coal under this agreement shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the seller under this contract shall be weighed either upon scales at mines, tested and approved by the buyer and the weighmasters approved by the buyer or upon the weigh scales of the railway over which it passes on it' way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The seller shall consign and manifest such coal to such points and parties as the buyer shall from time to time direct, and will furnish and send to the buyer and the consignees named by the buyer, and to such other parties as the buyer may direct, such copies of manifest

and such notice relating to coal shipped as the buyer may direct; and the seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said collieries.

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Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than pea coal shall be less than $3.50 per ton, then the seller may, at his option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach three dollars and fifty cents per ton, provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the seller to the buyer; and, if any question arises as to the price being less than $3.50, it shall be submitted to the permanent arbitration board.

Seventeenth. This agreement shall inure to the benefit and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively."

That the evidence thus far introduced further indicates that the contracts refused to be produced are substantially identical with the form of contract agreed upon at said conferences.

The evidence further shows that since January 1, 1901, the average market price of prepared sizes of anthracite coal f. o. b. tidewater New York Harbor has been at various times as low as $4.00 per ton.

The evidence further shows that since January 1, 1901, the freight rate per ton of the respondent companies on prepared sizes of anthracite coal from the coal fields of Pennsylvania to tidewater, f. o. b., according to their tariffs filed with your petitioner, have been as follows:

Lehigh Valley Railroad, Hazleton to Jersey City, $1.65.
Delaware, Lackawanna & Western, Scranton to Hoboken, $1.60.
Central Railroad of New Jersey, Mauch Chunk to Hoboken, $1.75.
Philadelphia & Reading Railway, Shamokin to Hoboken, $1.75.
Philadelphia & Reading Railway, Shamokin to Port Reading, $1.55.
New York, Ontario & Western, Scranton to Weehawken, $1.60.
Erie Railroad, Carbondale to Jersey City, $1.75.

At the session on April 24, 1903, Orlando C. Post was called as a witness on behalf of complainant, and having been duly sworn, the following proceedings took place:

Mr. SHEARN. You are auditor of the D., L. & W.?

Mr. POST. General auditor; yes, sir.

12 Mr. SHEARN. Have been for some time?

Mr. POST. Four years the 1st of June.

Mr. SHEARN. All the books of the Delaware, Lackawanna & Western Railroad Company are under your custody and control?

Mr. POST. Yes, sir.

Mr. SHEARN. What are the different books that you keep known as? Describe the different books.

Mr. POST. There are a great many.

Mr. SHEARN. You have a cash book?

Mr. POST. Cash book, ledger, journal, voucher records, bill registers, and various other books.

Mr. SHEARN. Name them.

Mr. POST. I could not name all of them.

Mr. SHEARN. Please do.

Mr. POST. Those are the principal books of record.

Mr. SHEARN. Now, then, when the D., L. & W. purchases coal for shipment over its road, into what book does your purchase transaction go first?

Mr. POST. The purchase transaction is covered by a voucher which is entered in the voucher record.

Mr. SHEARN. Does not that transaction appear in any other book than the voucher record?

Mr. POST. The voucher record is summarized at the end of the month and appears on various accounts.

Mr. SHEARN. The first entry of the purchase of coal is made in the voucher record?

Mr. POST. From the voucher into the voucher record.

Mr. SHEARN. When the purchase is made does it appear upon a paper you call voucher?

Mr. POST. Yes, sir.

Mr. SHEARN. What does that voucher state in general terms?

Mr. POST. It states the different sizes of coal purchased, and the price and amount, and a voucher is drawn in favor of the party from whom the coal is purchased, and that voucher is passed through our account, approved by the president, and paid by the treasurer, and that is our receipt.

Mr. SHEARN. That voucher goes with the check for payment to the seller of the coal?

Mr. POST. Yes, sir.

Mr. SHEARN. And he signs it and returns it to you?

Mr. POST. To the treasurer.

Mr. SHEARN. Then is the voucher filed away in the book called the voucher book?

Mr. POST. No; it is transcribed in the voucher record and filed in my office.

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Mr. SHEARN. How many vouchers would you have to bring, do you suppose, covering the months of April and May, 1901, for the purchase of coal from those five companies?

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Mr. POST. I can only estimate that. It might vary, but I do not think it would exceed over forty or fifty; maybe less than that.

Mr. SHEARN. And for April and May, 1902?

Mr. POST. It runs pretty much the same.

Mr. SHEARN. And for January and February, 1903?

Mr. POST. It runs about the same, month after month, except during strike months.

The CHAIRMAN. Would the voucher record show what the expenditure was for?

Mr. POST. It would show coal purchased.

The CHAIRMAN. It would show it was coal rather than something else, I suppose.

Mr. POST. Yes, sir.

The CHAIRMAN. I assume the voucher would show all the essential elements of the transaction—the voucher record?

Mr. POST. That is only a skeleton entry.

The CHAIRMAN. It would show the name of the seller?

Mr. POST. Yes, sir; and the location.

The CHAIRMAN. The address?

Mr. POST. Yes, sir.

The CHAIRMAN. And what it was, whether coal or something else?

Mr. POST. Yes, sir.

The CHAIRMAN. And the total amount?

Mr. POST. Yes, sir.

The CHAIRMAN. And the date, I suppose?

Mr. POST. Well, yes. It is all covered in the one month, you say?

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Mr. SHEARN. Now, as to coal that is purchased by the company under those five contracts, what entries are made showing the freight charges on that coal?

Mr. POST. That coal is merged in with that which we mine ourselves.

Mr. SHEARN. So your charge for the transportation of the coal you purchase under those five contracts is like the freight charged on your own coal, a mere matter of bookkeeping, is it not, because the Delaware, Lackawanna & Western Railroad Company is engaged both in the business of mining and transporting?

13 Mr. POST. We have separate accounts with our coal department.

Mr. SHEARN. You charge those things up against your coal department?

Mr. POST. Yes, sir.

Mr. SHEARN. And charge them up at some arbitrary figure, I suppose—so much per ton? Do you put in there the published tariff rate?

Mr. POST. Yes, sir.

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Mr. SHEARN. I should like, then, to have produced on Thursday of next week the original vouchers for the months of April and May, 1901, and April and May, 1902, and January and February, 1903, showing the transactions for the purchase and transportation of coal bought from these independent, these five companies.

Mr. ROSS. In order that the record may be made here, I will object to their production on the ground that they are irrelevant, immaterial, and incompetent at this hearing; they pertain to contracts which are between our company and third parties who are not parties to this record, and purely a State transaction, which has nothing to do with the inquiry before this Commission, and for all the other reasons which have heretofore been stated.

The CHAIRMAN. I suppose the subpœna served on this witness required him to produce them.

Mr. POST. No, sir.

Mr. SHEARN. It required him to produce all books of account.

Mr. POST. No.

Mr. SHEARN. We will have no misunderstanding about that. They were served on the treasurer, and then counsel informed me that the auditor had the custody of those books. If you make a point of that, I will have a subpœna served on him, unless you concede that a subpœna has been duly served on this witness.

The CHAIRMAN. We presume that you will decline to produce the books.

Mr. ROSS. Yes, sir.

The CHAIRMAN. And that is the important question, and it is not necessary to encumber the record with minor matter in regard to it.

Mr. SHEARN. Then it is conceded that a subpœna duces tecum was duly served on Mr. Post, auditor of the D., L. & W., who has custody of these papers called for, requiring him to produce at this hearing the vouchers for the months I have named, which he has declined to do—declined under advice of counsel to produce them upon the grounds stated by Mr. Ross. I ask the court to direct the witness to produce them.

Mr. ROSS. We will admit that a subpœna has been served.

Mr. SHEARN. As I have just stated?

Mr. ROSS. Only it was on Mr. Post.

Mr. SHEARN. I ask the court to direct the witness to produce the vouchers.

Mr. ROSS. We object on the same grounds.

The CHAIRMAN. We make the same ruling and the witness is informed that he is required and directed by the Commission to produce the vouchers called for.

Mr. ROSS. The same objection is noted.

The CHAIRMAN. The same objection is made and overruled. The witness on advice of counsel declined to produce them."

That when said witness refused to produce the aforesaid vouchers your petitioner was engaged, as aforesaid, at room 70, in the post-office building, New York City, in the State of New York, in the discharge of its duty to execute and enforce the provisions of the said act to regulate commerce, and in the exercise of its authority to inquire into the management of the business of common carriers subject to the provisions of said act, and to keep itself informed as to the manner and method in which said business is conducted, and to obtain from said common carriers full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created; and your petitioner is of the opinion that said vouchers are not only material and relevant to the issues on trial in said proceeding, but that the production thereof, as required by it as aforesaid, is necessary to enable your petitioner to discharge its duty and execute and enforce the provisions of said act to regulate commerce, and to inform your petitioner as to the manner and method in which the business of said common carriers is conducted, and to enable your petitioner to obtain the full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created.

At the session on April 29, 1903, George F. Baer was called as a witness on behalf of the complainant, and, after being duly sworn, the following proceedings took place:

"Mr. SHEARN. Did you draw these contracts—these Temple Iron Company contracts [exhibiting contracts]?

Mr. BAER. Which contracts?

Mr. SHEARN. These contracts [exhibiting].

Mr. BEAR. Show them to me. Do not ask me without showing them to me.

(The contracts were handed to witness.)

14 Mr. BAER (after examining contracts). I do not think I did. I probably revised them. These are copies of what you got from the guarantee company?

Mr. SHEARN. Yes, sir.

Mr. BAER. Those contracts were drawn in Mr. Stetson's office. I probably dictated some part of it and he dictated some part of it.

Mr. SHEARN. You are familiar with their terms, are you not?

Mr. BAER. I was at the time, and approved of them at the time.

Mr. SHEARN. Will you please look them over and state whether they are not copies of the contracts?

Mr. BAER. No; I will not. That is asking a gentleman to do something he can not do. I remember a judge of a court being called upon to testify to a paper, and when he went to testify I called his attention to something in connection with it, and he thanked me and said he had forgotten what it contained, and that he might have said something that was not true. If you ask me to state from recollection what is in a paper, it is not fair.

Mr. SHEARN. You recollect the leading and essential features of these contracts, do you not?

Mr. BAER. I will not testify about any written paper by recollection. I decline to do that.

Mr. SHEARN. Do you recollect that the preliminary contract between Simpson & Watkins and the Guarantee Trust Company, dated February 27, 1899, provided for the transfer to Simpson & Watkins by the trust company of trustees' certificates for the capital stock of the Temple Iron Company to the amount of $2,250,000?

Mr. BAER. I decline to answer that, because the paper is in existence and can be produced.

Mr. SHEARN. Will you produce it?

Mr. BAER. I will not.

Mr. CAMPBELL. I object. The grounds for the presentation of this evidence has been presented and notification made to the custodian, who, for the reasons set forth in the record, has declined to produce it. I object to undertaking to prove the contents of the document in this way.

Mr. SHEARN. This contract, dated February 27, 1899, between the Temple Iron Company and the Guarantee Trust Company of New York and the Lehigh Valley, appears to have been executed by you as president of the Temple Iron Company. You have custody of that contract, have you not—the Temple Iron Company's original copy?

Mr. BAER. I have not. I suppose it is in the hands of the treasurer.

Mr. SHEARN. It is under your control?

Mr. BAER. Yes, sir; it is under my control if it is in the files of the Temple Iron Company.

Mr. SHEARN. You could produce it if you would?

Mr. BAER. I won't produce it unless I am ordered by the court to produce it.

Mr. SHEARN. You could produce it if you wished?

Mr. BAER. I will not produce it unless ordered by the court.

Mr. SHEARN. Could you produce it if you would?

Mr. BAER. I will not make any further answer to that question.

Mr. SHEARN. I ask the court to direct him to answer the question.

The CHAIRMAN. The contract is not here.

Mr. SHEARN. A copy of it is here. This court has power to order the production before it of any documents that it deems are important for the determination of the issues, and under your discretion so to do I ask you to direct the witness to produce the contract.

The CHAIRMAN. That is precisely the question we have had up before.

Mr. SHEARN. It is in different shape now. The trust company came in and objected because it was a trust company and there were trust relations—confidential relations. I should be permitted in the first place to ask this question of Mr. Baer to show that if he desired to do so he could produce it, and then ask your honors to direct the witness to produce it, and that is the purport of that question. I submit it is a proper one.

The CHAIRMAN. He does not put his refusal on the ground of inability.

Mr. SHEARN. I have not asked about his grounds. I asked if he could do it.

Mr. BAER. I will state to the Commission that if it was on file or in the custody of the company and a proper order was made by the court I would produce it. I do not know that it is there. I have not the physical custody of these papers, but if it is necessary to produce that paper I can make an order requiring my subordinate officer to do it.

Mr. SHEARN. This Commission has ordered the company to produce it.

Mr. BAER. It has not ordered me.

Mr. SHEARN. I want to know if you could produce it if you would?

Mr. BAER. I decline to make any other answer.

Mr. SHEARN. I ask the court to direct the witness to answer the question.

The CHAIRMAN. The contract is not here and he has not been subpœnaed to produce it.

Mr. SHEARN. But I am going to ask him, if he answers that question in the affirmative, as he must—I am going to ask you to direct him to produce it.

The CHAIRMAN. He has said enough to satisfy me that he could produce it if he were willing to do so.

15 Mr. SHEARN. Well, he has not satisfied me. It seems to me his manner indicates very clearly that he will not.

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The CHAIRMAN. I do not know what more the witness could say. He is not an officer who would ordinarily have the contract in his actual

custody. He says he is president of the company, and could direct his subordinate officer, who may have it, to give it to him. To be perfectly clear, Mr. Baer could produce the contract.

Mr. SHEARN. Why should he not answer the question?

Mr. BAER. Because you asked if I could produce it, and I explained the way I could. I do not know whether it is on the files. I do not know whether the treasurer has it, or who has it; but if it is in the custody of any subordinate officer, and I am ordered by a competent court or this tribunal to produce it, I will produce it if it is in our office.

Mr. SHEARN. I do not find any fault with that if you will stand by it and produce it when ordered by this Commission. Is there any doubt in your mind as to this contract being in the files of the Temple Iron Company?

Mr. BAER. I have no doubt in the world it is in the custody of some officer and in the files of the Temple Iron Company.

Mr. SHEARN. Now, I ask the court to direct Mr. Baer to produce the agreement dated February 27, 1899, between the Temple Iron Company and the Guarantee Trust Company and the Reading Company, and between the same companies and the Lehigh Valley Railroad Company, and between the same companies and the Delaware, Lack'wanna & Western, and between the same companies and the Lehigh Valley, the New York, Susquehanna & Western, and the Reading Company.

Mr. CAMPBELL. And I object for the same reasons set forth in the objections at the time the secretary of the Guarantee Trust Company was examined.

Mr. ROSS. On behalf of the Delaware, Lack'wanna & Western I also object, for the reason stated before.

Mr. BROWNELL. I enter the same objection on behalf of the Erie.

The CHAIRMAN. We are constrained to overrule the objections.

Mr. CAMPBELL. And in accordance with our previous action I advise witness to decline to produce the papers until the question has been determined by the court.

Mr. SHEARN. He has already said he would comply with the order of this Commission.

Mr. ROSS. On behalf of the Delaware, Lackawanna & Western I desire to request the witness to refuse to produce the documents referred to.

Mr. BAER. As instructed by counsel, I decline to produce them, waiving all questions of the fact that they are not here, or anything of that kind."

At the session on April 23, 1903, counsel for the complainant stated: "I will proceed a little out of the order in which I had expected to do. For the convenience of counsel, and at their request, I am going to call upon the secretary of the Guaranty Trust Company of New York, the trustee under the Temple Iron Company agreements." Thereupon Edgar C. Hebbard was called as a witness on behalf of the complainant, and, having been duly sworn, the following proceedings took place:

"Mr. SHEARN. Mr. Hebbard, you are the secretary of the Guaranty Trust Company of New York?

Mr. HEBBARD. I am.

* * * * * * *

Mr. SHEARN. Is the Guaranty Trust Company of New York the trustee under any agreement with the Temple Iron Company or with any of these respondent railway companies?

Mr. HEBBARD. They are.

Mr. SHEARN. As such trustee certain contracts have been entered into between some of these respondent companies, the Temple Iron Company, and the Guaranty Trust Company?

Mr. HEBBARD. They have.

* * * * * * *

Mr. SHEARN. You have been served, have you not, to produce at this hearing all contracts entered into between the Guarantee Trust Company of New York, as trustee, the Temple Iron Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Philadelphia & Reading, and the Reading Company since January 1st, 1899?

Mr. HEBBARD. I have.

Mr. SHEARN. There are such contracts, are there not?

Mr. HEBBARD. There are.

Mr. SHEARN. Have you brought them to court?

Mr. HEBBARD. I have.

Mr. SHEARN. They are now in your custody in court?

Mr. HEBBARD. They are.

* * * * * * *

Mr. SHEARN. Have you a contract dated the 10th day of April, 1899, between the Guaranty Trust Company of New York and the Erie Railway Company?

16 Mr. HEBBARD. I have.

* * * * * * *

Mr. SHEARN. And you have that contract in court?

Mr. HEBBARD. Yes, sir.

Mr. SHEARN. Please produce it.

Mr. CAMPBELL. I object, if your honors please. So far as the Erie Railroad Company is concerned, I have no voice, and I have no right to present the question, but inasmuch as it is obvious from what has preceded in the statement of counsel, parties for whom I am concerned are interested in the production of these papers.

Mr. SHEARN. May I interrupt here? I will ask about the other contract, and then let the objection be stated. Have you a contract dated April 10, 1899, between the Guaranty Trust Company of New York and the Lehigh Valley Railroad Company?

Mr. HEBBARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York and the Central Railroad Company of New Jersey?

Mr. HEBBARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York and the Delaware, Lackawanna & Western Railroad Company?

Mr. HEBBARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York and the New York, Susquehanna & Western Railroad Company?

Mr. HEBRARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guananty Trust Company of New York and the Reading Company?

Mr. HEBBARD. I have.

Mr. SHEARN. And a contract dated the 27th day of February, 1899, between Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pa., described as vendors in the contract, and the Guaranty Trust Company of New York, described as trustee, party of the second part?

Mr. HEBBARD. I have.

* * * * * * *

Mr. SHEARN. Please produce the contracts I have called for.

Mr. CAMPBELL. I object.

Mr. ROSS. I object on behalf of the Delaware, Lackawanna & Western.

CHAIRMAN. Mr. Shearn, please state on what grounds you claim these contracts are admissible."

Counsel for the complainant then stated the grounds upon which he claimed that said contracts were material and relevant to the inquiry. Counsel for the Philadelphia & Reading Railroad Company made reply. The chairman then asked:

"Those papers (referring to said contracts) must have all been made public at the time, or the stock would not have been sold."

Counsel for the Philadelphia & Reading Railway Company responded:

"Yes; they were. This is a question of principle we are discussing. There would not be the slightest objection to your honors seeing every word of them all at any time, but officially we do not desire you to regard them."

Mr. JULIEN T. DAVIES (appearing specially as counsel for the witness). Inasmuch as it appears by the statement of the counsel for the petitioner that these contracts relate solely to the security and endorsing of the security in these various bonds, and that the relation of the Guaranty Trust Company is that of a trustee to these properties, and that the various parties in interest have objected, the Guaranty Trust Company is constrained, with all due respect to this honorable Commission, to object to the production of these various contracts upon the statement of counsel for the petitioner and upon the following grounds:

That the contracts called for do not relate to the matters under investigation in this proceeding, nor to any matter which this Interstate Commerce Commission is entitled under the Constitution or laws of the United States to investigate.

Second. That the documents therein called for are contracts made by said Guaranty Trust Company with certain third parties who are not parties to this proceeding, and other contracts made by said trust company which is not a party to this proceeding, with some of the parties to this proceeding, but that the subject-matter of none of the contracts relates to matters which this Commission is entitled under the Constitution or laws of the United States to investigate.

Third. That it appears on the face of said subpœna that the documents therein called for have no relation to the matters now under investigation, and that this Commission does not possess and can not be invested with power to make inquiry into private affairs of the said Guaranty Trust Company.

Fourth. That this Commission has no power under the Constitution or laws of the United States to require said Guaranty Trust Company, which is not a corporation subject to the act to regulate interstate commerce, being the act of February 11, 1893, chapter 83, and various acts amendatory thereof and supplemental thereto, to produce the several documents described in said subpœna and called for, and that said trust company is not legally bound to produce them.

17 Fifth. That said contracts are irrelevant, immaterial, and incompetent with repect to the particular matter under investigation in this proceeding, and that not sufficient foundation for their introduction in evidence has been laid."

The following then took place:

"Mr. SHEARN. Well, I think you ought to withdraw that last objection, Mr. Davies, because it is at your own request that I called for them this morning so as to accommodate you and your client; I did not intend to call for them until next week. It seems to me it is unfair to press that objection.

Mr. DAVIES. Well, I will press the objection that they are irrelevant, immaterial, and incompetent, and ask to reserve the objection with respect to the proper foundation being laid, because I very much question whether the counsel for the petitioner will be able to lay any foundation which will justify this Commission in admitting those contracts in evidence on the counsel's own statement."

Thereupon counsel for the Erie Railroad Company and the New York, Susquehanna & Western Railroad Company stated that on their behalf he wished to enter an exception to the reception of the contracts on the same grounds stated by counsel for the Philadelphia & Reading Railway Company and counsel for the Guaranty Trust Company.

The following proceedings then took place:

"Comr. CLEMENTS. If these contracts themselves show, or in relation to the testimony tend to show, that competition between these carriers of this coal was restrained or reduced, would you doubt the relevancy of that fact as pertinent to the question of reasonable rate?"

Counsel for the Erie Railroad Company and the New York, Susquehanna & Western replied:

"Mr. BROWNELL. I most certainly should. I do not think it has any bearing on any such question. I do not think that question is at issue."

The following proceedings then took place:

"Comr. CLEMENTS. I understand the contention of counsel to be that competition has been throttled. I do not know whether it was before these contracts, in pursuance of them, or because of them. I understood you to say that they had nothing to do with the reasonableness of these rates.

Mr. BROWNELL. I think the contracts as they are, or the contracts as they are represented, to have no bearing upon the question of the reasonableness or unreasonableness of these rates.

Comr. CLEMENTS. Well, it seems to me that the question of whether there is free competition or whether it has been partly restrained is a very pertinent question on the subject of reasonable rates. The law does not fix reasonable rates and does not authorize this Commission to do so, but the Supreme Court said, in the Joint Traffic case, that one of the objections to that kind of agreement, for carriers to agree upon and maintain rates, even if claimed to be reasonable, if it was done in restraint of trade, one final end might be to destroy all means of comparison, and there could be no standard of comparison to determine a reasonable rate. What the facts are as to these contracts I do not know, but it does not seem to me it is a question foreign to the issues before us.

* * * * * * *

Mr. ROSS. On behalf of the Delaware, Lackawanna & Western Railroad Company I desire to object to the introduction of these contracts on the ground that they are irrelevant, incompetent, and immaterial, and that they are between parties not before this tribunal.

Comr. PROUTY. Did your road sign one of those contracts?

Mr. ROSS. My road signed one, and it seems to me that until the other parties to this agreement are before this tribunal this Commission can not require this trust company to bring these contracts in here and submit them for examination.

Comr. FIFER. Is that company represented here?

Mr. ROSS. They appear here specially by counsel; that is, the trust company appears here because their secretary has been subpœnaed. His counsel is here. But there are more than two parties.

* * * * * * *

Comr. CLEMENTS. Congress has not fixed a rate or authorized this Commission to do so, but has enacted a law under which the rates can be fixed by competition, and it is important in determining a reasonable rate to know whether there is competition.

Mr. ROSS. I think perhaps it is important for the Commission to know whether there is competition.

The CHAIRMAN. What is the real point here, Mr. Ross? Are not the circumstances and conditions under which this rate is established by the carriers and maintained by them, whether competitive or otherwise, properly shown and taken into account in determining whether that rate is reasonable or not in contemplation of the first section.

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Mr. ROSS. This Commission has already found that a rate of $1.50 a ton is reasonable, and at that time they went into all questions involved in ascertaining and determining the reasonable rate.

The CHAIRMAN. But that rate has not been charged.

Mr. ROSS. No; a rate of $1.55 a ton has been charged.

The CHAIRMAN. The tariff rate to-day, which is the rate under consideration, is higher than the rate which the Commission approved.

Mr. ROSS. Is higher to-day than the Commission found to be reasonable at that time, and is being charged undoubtedly because the court said that the Commission had failed to take into consideration an important element in arriving at that conclusion.

The CHAIRMAN. I understood you to say substantially that the question as to whether a given rate is established and maintained by the

carriers under conditions of competition or otherwise is competent to be shown as bearing on the reasonableness of that rate.

Mr. Ross. Yes, sir.

* * * * * * *

Mr. THORNE. As counsel for the Central Railroad of New Jersey, I desire to have my objection entered for the same reasons as those already presented.

* * * * * * *

Mr. CARR. On behalf of the Delaware & Hudson and the New York, Ontario & Western, I wish to object to putting in all these contracts, on the ground that there is no charge in the petition, no claim or pretense made by counsel for petitioner that either of these companies was concerned with the Temple Iron Company contract or arrangement, or had anything to do with the pooling of the earnings according to certain percentages, and inasmuch as it is claimed that this evidence is proper in order than an inference may be drawn by the Commission that unreasonable rates are charged by all the companies, including the Delaware & Hudson, and by the New York, Ontario & Western, we have a right to object to testimony being put in with which we are not connection from which an inference of that kind can be drawn.

* * * * * * *

The CHAIRMAN. Well, we are not free from doubt about this question. We are constrained to hold, in view of the statements of complainant's counsel, that further evidence will be produced in connection with the contracts in question that the objection should be overruled. Of course, as the evidence stands now, it is clear the contracts are not admissible.

Mr. SHEARN. Because you have not seen them.

The CHAIRMAN. The statement is made by counsel that other evidence will be given and other facts brought forward which, taken in connection with these contracts, will tend to show first that there is a division of this traffic in violation of the fifth section of the act, and that the rates are established and maintained by the carriers by a combination and not as the result of competition.

Mr. BROWNELL. Then if the Commission is in doubt about the propriety of the introduction of these contracts and there is no evidence in now making them competent, would it not be proper to defer acting upon this until such evidence is produced?

The CHAIRMAN. Well, that objection was substantially waived because, as stated this morning, this witness has been called for the accommodation of himself and counsel out of his order.

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The CHAIRMAN. I do not understand that anything is to be apprehended from such publicity as these contracts may get by the fact that the Commission holds that they must be produced.

* * * * * * *

Mr. SHEARN. I ask the witness to produce the contracts.

The CHAIRMAN. And declines to do so on the advice of counsel.

Mr. DAVIES. Yes, sir.

The CHAIRMAN. For the reasons stated by counsel?

Mr. DAVIES. Yes, sir.

The CHAIRMAN. Which the Commission holds at present are not sufficient, and directs that the contracts be produced by the witness, and on advice of counsel he persists in his refusal to do so.

Mr. DAVIES. Yes, sir.

For greater particularity as to the statements made by complainant's counsel bearing on the relevancy and materiality of said contracts and replies made thereto by opposing counsel, reference is made to the stenographer's minutes of said hearing (pp. 319–89, inclusive), which, for the purposes of this petition, are made part hereof.

That when said witness refused to produce the aforesaid contracts your petitioner was engaged, as aforesaid, at room 70 in the post-office building, New York City, in the State of New York, in the discharge of its duty to execute and enforce the provisions of the said act
19 to regulate commerce, and in the exercise of its authority to inquire into the management of the business of common carriers subject to the provisions of said act, and to keep itself informed as to the manner and method in which said business is conducted, and to obtain from said common carriers full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created; and your petitioner is of the opinion that said contracts are not only material and relevant to the issues on trial in said proceeding, but that the production thereof, as required by it as aforesaid, is necessary to enable your petitioner to discharge its duty and execute and enforce the provisions of said act to regulate commerce and to inform your petitioner as to the manner and method in which the business of said common carriers is conducted, and to enable your petitioner to obtain the full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created.

That at the session on April 30, 1903, Eben B. Thomas was called as a witness on behalf of the complainant, and, being duly sworn, the following proceedings were had:

"Mr. THOMAS. I do not believe in creating unnecessary competition.

Mr. SHEARN. And you have testified that the public have more reason to fear competition and the results of competition than they have to fear high freight rates.

Mr. THOMAS. I think unrestrained and unrestricted competition is the most dangerous thing the country could be exposed to.

* * * * * * *

Mr. SHEARN. Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business of selling coal in accordance with those same ideas, so as to avoid what you regard as reckless competition?

Mr. GOWAN. I object to that for the reason that it relates to the business and the sales of the Lehigh Valley Coal Company's coal, and has nothing to do with the question of the reasonableness of the rates charged for coal and the coal being sold after it reaches tide water.

The CHAIRMAN. It only presents the question in another form, which has been decided here, and the objection is overruled. The question may be answered.

* * * * * * *

Mr. SHEARN. What do you say, Mr. Thomas?

Mr. THOMAS. I would say that when I hire a carpenter to do a job I do not like to say what tools he shall use. I am here under the direction of counsel and under his advice.

Mr. SHEARN. If the Commission directs you to answer, you will answer, will you not?

Mr. THOMAS. I am under the direction of counsel. You would not like your witness to do that, would you?

Mr. GOWEN. I instruct the witness not to answer that question.

The CHAIRMAN. The objection raised is overruled and the witness has been directed to answer, and notwithstanding that direction he insists upon declining.

Mr. SHEARN. Mr. Thomas, who fixes the price of the coal of the Leehigh Valley Coal Company that is sold at tide water?

Mr. GOWAN. I shall have to instruct the witness not to answer that question.

Mr. SHEARN. Who fixes the price of the coal of the Hillside Coal & Iron Company and the Pennsylvania Coal Company that was sold at tide water during your connection with those properties?

Mr. THOMAS. Under the advice of counsel, I hope you will excuse me from answering.

* * * * * * *

Mr. SHEARN. I ask the court to direct the witness to answer. These questions were all put to Mr. Baer and answered according to his ideas without objection. I would be glad to have Mr. Thomas's testimony on that subject, but they seem to object to his giving the testimony.

The CHAIRMAN. If I understand the question, I thought Mr. Baer answered similar questions—perhaps questions not in the same form, but going to the same purpose.

Mr. SHEARN. And no objection was made. Now, I put the same question in a different form to this witness and the objection is made. What ruling does the court make?

The CHAIRMAN. The objection is overruled and the witness is directed to answer.

Mr. THOMAS. Under the advice of counsel I respectfully decline, without discourtesy to the Commission or to anyone else.

* * * * * * *

Mr. SHEARN. Are the prices of anthracite coal at tide water fixed by agreement between the presidents of these different coal companies?

Mr. GOWEN. I object to the question.

The CHAIRMAN. The objection is overruled and the witness is directed to answer.

Mr. SHEARN. And does the witness decline to answer under the advice of counsel?

Mr. THOMAS. Personally, I will say, I would prefer to answer the question.

* * * * * * *

Mr. SHEARN. The order of the court that the witness is required to answer, as I understand it, has been given. The witness is directed to answer it, do I understand?

The CHAIRMAN. Yes, sir; and he declines."

20 That at the session on May 1, 1903, William H. Truesdale was called as a witness on behalf of the complainant, and having been duly sworn, the following proceedings took place:

"Mr. SHEARN. You are the president of the Delaware & Lackawanna Railroad Company, are you not?

Mr. TRUESDALE. I am; yes, sir."

* * * * * * *

Counsel for the complainant, reading from the annual report of the Delaware, Lackawanna & Western Railroad Company for the year ending December 31, 1901, said: "Commissions were paid on 3,618,598 tons of coal, amounting to $746,553.13." The following then took place:

"Mr. ROSS. I object to that as immaterial.

Mr. SHEARN. It is in. I am calling attention to what is already in.

Mr. ROSS. I move that it be stricken out.

The CHAIRMAN. The report is in.

Mr. ROSS. I move that all of that portion of the report be stricken out which relates to the mining or sale of coal. The only question before this Commission is the question as to the transportation.

Comr. PROUTY. How can you separate them?

Mr. ROSS. He is going into what it costs us to sell our coal. That inquiry is absolutely immaterial.

Mr. SHEARN. I do not know when it became so. It has not been immaterial for the last two weeks.

The CHAIRMAN. Counsel is now calling the attention of the Commission to certain facts and figures that appear already in the report received.

Mr. ROSS. And asking questions of the witness pertaining to it.

The CHAIRMAN. He has not yet, has he?

Mr. SHEARN. No, sir.

Mr. ROSS. Yes, sir. What was the question, Mr. Stenographer?

(The stenographer repeated the question, as follows: 'Commissions were paid on 3,618,598 tons of coal, amounting to $746,553.13.')

The CHAIRMAN. I do not mean to say that you are precluded from raising the question, Mr. Ross. Proceed, Mr. Shearn.

Mr. SHEARN. Who sells your coal on commission?

Mr. ROSS. I object, if the court please, on the ground that it is absolutely immaterial to this inquiry.

The CHAIRMAN. Your purpose being, I suppose, to raise the same question?

Mr. ROSS. Not only that question, but the other question. There is another question involved in this hearing pertaining to our road—that is our company is differently situated from the others. We are operating under a charter that gives us the right to conduct a general coal business and also gives us the right to transport coal and other mercandise and persons and property. Now, it seems to me that the jurisdiction of the Commission is limited to that portion of the business of the company that pertains to transportation which is interstate. The jurisdiction of the Commission, in other words, does not extend to any business that it may take under its charter given it by the State of Pennsyvania.

Comr. PROUTY. Mr. Shearn claims that you discriminate against the individual operators on your line.

Mr. ROSS. I insist upon my objection and request the witness to decline to answer.

The CHAIRMAN. We think the witness should answer.

Mr. SHEARN. Will you please answer the question?

Mr. ROSS. I request the witness, as counsel for the company, not to answer.

Mr. SHEARN. I ask the Commission to instruct the witness to answer.

The CHAIRMAN. Objection is made, and the objection is overruled. The witness is directed to answer the question, and on advice of counsel he declines.

Mr. SHEARN. Do you decline to answer, Mr. Truesdale?

Mr. TRUESDALE. On the advice of my attorney, I do, sir.

Mr. SHEARN. Do you consider that twenty cents a ton commission that you have charged here against the cost and expense of mining is a fair and reasonable charge for commissions?

Mr. ROSS. The same objection.

The CHAIRMAN. Same ruling.

Mr. SHEARN. You maintain a sales department of your own at the city of New York, don't you?

Mr. ROSS. Same objection.

The CHAIRMAN. Do you object to the fact——

Mr. ROSS. I object to going into any portion of that business pertaining to the mining and selling of coal.

Mr. SHEARN. Do you refuse to answer the question?

Mr. TRUESDALE. I must decline.

Mr. SHEARN. I ask the Commission to direct the witness to answer.

21 The CHAIRMAN. The witness is directed and required by the Commission to answer the question.

Mr. ROSS. Same ruling and same objection.

Mr. SHEARN. You have already testified that the Delaware, Lackawanna & Western Railroad Company was engaged in the business of mining and selling anthracite coal. Do you sell anthracite coal at tidewater?

Mr. ROSS. Same objection.

Mr. SHEARN. You object?

The CHAIRMAN. The objection is overruled.

Mr. SHEARN. I ask the witness to answer the question.

Mr. ROSS. Same objection and same ruling.

The CHAIRMAN. The witness is directed to answer.

Mr. TRUESDALE. I decline, on advice of counsel, to do so.

Mr. SHEARN. I read from the same report that the total cost and expense to this railroad company for mining, purchasing, and selling coal—the number of tons I have already read in evidence—for the year ending December 31, 1901, including the items of cost of transportation, handling, and selling, and this item of $746,000 for commissions, and the item of $91,000 for general expenses, and the item of $184,765 for vessel expenses, and also charging up against it extraordinary improvements amounting to $321,853, was $26,370,104.16, which left a profit on the transactions, with those items included, on total sales of 7,334,255 tons, of $1,638,643.13.

Mr. ROSS. Same objection, and I again make the motion that that portion of the report pertaining to the mining and selling of coal be stricken out.

Mr. SHEARN. What elements or expenses are included in the item $91,321.65 for general expenses?

Mr. ROSS. I object, if the court please, for the same reason.

The CHAIRMAN. The Commissioner overrules.

Mr. ROSS. Same objection and same ruling.

The CHAIRMAN. The Commissioner directs the witness to answer, and the witness declines to do so, notwithstanding.

Comr. YEOMANS. All the coal you handle, mine, or purchase you transport to market, do you not, to tidewater or somewhere—you transport it over your road?

Mr. TRUESDALE. All we do not consume.

Comr. YEOMANS. And of course the rate is mixed up? You buy coal for a certain amount and take it to the seaboard and sell it for a certain figure, and out of that somewhere comes the rate, does it not?

Mr. TRUESDALE. The rate is in there, and one of the items Mr. Shearn read covers the transportation rates of the railroad company and are our tariff rates.

Comr. YEOMANS. You buy the coal and agree with this man to take his coal to tidewater or elsewhere and sell it, don't you, and give him a certain amount—you transport the coal?

Mr. TRUESDALE. We do.

Comr. YEOMANS. And sell it for thirty-five or sixty-five per cent, or whatever has been testified?

Mr. TRUESDALE. Yes, sir.

Comr. YEOMANS. Then, why is not the rate in all of this? It can not go to tidewater without having a rate?

Mr. ROSS. None of the questions, as I understand, involve the rate.

Comr. YEOMANS. How can you find the rate unless you find what the cost——

Mr. ROSS. The regular tariff rate is charged. That question has not been asked.

Comr. YEOMANS. It has not been answered, but probably will be before we get through with this investigation.

* * * * * * *

Mr. SHEARN. Well, when coal is sold at tidewater at $4 a ton and you pay out 65 per cent of it to the private operator, you lose money on each transaction, do you not, if you charge up $1.55, or the full tariff rate, against the transportation of that coal?

Mr. ROSS. I object. It involves the sale of coal and is not pertinent to this inquiry.

The CHAIRMAN. That evidently follows, Mr. Shearn.

Mr. SHEARN. I understand it follows, but I want to know if he agrees that it follows; then I want his explanation of why they are willing to do business at a loss.

Mr. MOOT. You want to go into the purchase and sale business?

Mr. SHEARN. I certainly do, and expect to, either now or later.

Mr. BUDD. We want to go into all the elements of this business.

The CHAIRMAN. What is the question?

The question was repeated by the stenographer, as follows: 'Well, when coal is sold at tidewater at $4 a ton and you pay out 65 per cent

of it to the private operator, you lose money on each transaction, do you not, if you charge up $1.55, or the full tariff rate, against the transportation of that coal?'

Mr. Ross. Objected to on the ground that it involves the same question heretofore objected to and for the same reasons.

The CHAIRMAN. It seems to me the same class of questions that have been asked, we have ruled should be answered.

Mr. SHEARN. Yes, sir. What ruling does the court make on the objection?

Mr. ROSS. There is one distinction, and that is that none of the
22 other companies had a charter to sell coal. The others were coal companies. This is a coal and carrying company.

The CHAIRMAN. It does not appear to us that that is a distinction that strengthens your objection. The objection is overruled and the witness is directed to answer.

Mr. SHEARN. Will you answer?

Mr. TRUESDALE. I decline for the same reasons as before.

Mr. SHEARN. What is the price of coal to-day, sold by The D., L. & W. at tidewater?

Mr. Ross. I object for the same reasons. It is immaterial to this inquiry.

The CHAIRMAN. We think that is a proper question. We have been accustomed to take evidence of the value of an article, the transportation of which is under consideration, and I do not know of any evidence of value better than the market price.

Mr. Ross. I think the objection comes technically——

Comr. PROUTY. You can consult yourself, Mr. Truesdale, as the president of the transportating department of the Lackawanna road, and answer that.

The CHAIRMAN. You may answer it.

Mr. TRUESDALE. Our price list on coal, prepared sizes—it varies according to size—egg, stove and nut, is $5, f. o. b. boat at our own terminals. It is a net price of $4.60.

Mr. SHEARN. What was it yesterday?

Mr. TRUESDALE. $4.50.

Mr. SHEARN. What has happened since yesterday to make the price $4.80 to-day?

Mr. Ross. I object.

Mr. SHEARN. I say, what has happened to make the advance? Has there been any change that you know of in the supply of coal since yesterday?

Mr. Ross. I object. It is absolutely immaterial to the questions involved.

The CHAIRMAN. We overrule the objection.

Mr. SHEARN. Do you decline to answer?

Mr. TRUESDALE. Yes, sir.

The CHAIRMAN. The objection is overruled and the witness is required to answer, and notwithstanding, he declines.

Mr. SHEARN. Have you observed and change in the demand for coal since yesterday?

Mr. Ross. Same objection.

The CHAIRMAN. Same objection and ruling.

Mr. SHEARN. Has the cost of transporting coal gone up any since yesterday to this market?

Mr. TRUESDALE. No, sir, I can not say that it has.

Mr. SHEARN. Has the cost of producing coal gone up any since yesterday?

Mr. ROSS. I object, because it is not material as to what the cost of producing coal is.

The CHAIRMAN. Objection overruled.

Mr. ROSS. I request the witness to decline to answer.

The CHAIRMAN. The witness is instructed to answer and decline to do so.

Mr. SHEARN. Why do you decline, Mr. Truesdale?

Mr. TRUESDALE. Because I am so instructed by my attorney.

Mr. SHEARN. What will the price of anthracite, prepared sizes, at tidewater be on the first of next month?

Mr. ROSS. Same objection.

The CHAIRMAN. Ask him if he knows.

Mr. SHEARN. Do you know what the price of anthracite coal, prepared sizes, at tidewater will be on the first of next month?

Mr. ROSS. Same objections and for the same reasons.

The CHAIRMAN. Same ruling. Witness is instructed to answer, if he knows.

Mr. ROSS. Same objection.

Mr. SHEARN. You refuse to state?

Mr. TRUESDALE. I decline on advice of my attorney.

Mr. SHEARN. And on no other ground?

Mr. TRUESDALE. On no other ground.

* * * * * * *

Mr. SHEARN. Who fixes the price of Delaware, Lackawanna & Western coal at tidewater?

Mr. ROSS. I object on the ground that it is immaterial to the questions before this Commission, for the reasons before stated.

The CHAIRMAN. You may answer the question.

Mr. ROSS. I request the witness to decline to answer the question.

The CHAIRMAN. The witness is directed to answer.

Mr. ROSS. Same objection and same ruling.

Mr. SHEARN. What are you going to do, Mr. Truesdale?

Mr. TRUESDALE. I decline on advice of counsel.

* * * * * * *

Mr. SHEARN. Don't you know that the price circulars are identical?

Mr. TRUESDALE. I do.

Mr. SHEARN. How do you account for the fact that the price circulars are uniform if there is no agreement?

* * * * * * *

Mr. ROSS. I object to that for all the reasons heretofore stated and request the witness to decline to answer.

23 The CHAIRMAN. The objection is overruled.

Mr. ROSS. The same objection.

The CHAIRMAN. The witness is directed to answer the question.

Mr. Ross. The same objection.

The CHAIRMAN. If he has any explanation to give of the fact he may give it unless he declines to answer the question.

Mr. Ross. I request the witness to decline to answer the question.

Mr. SHEARN. Do you decline to answer?

Mr. TRUESDALE. At the special request of my counsel I shall do so.

Mr. SHEARN. And for no other reason?

Mr. TRUESDALE. And for no other reason.

* * * * * * *

Mr. SHEARN. You have increased the price of your coal 50 cents a ton over last year, have you not?

Mr. TRUESDALE. It is.

* * * * * * *

Mr. SHEARN. What is the reason for that?

Mr. TRUESDALE. One of the chief reasons that lead to that increase was the increased wages we had to pay our mining employees and almost all employees connected with our railroad and our business generally, and the increase in the cost of everything, in the cost of supplies and materials that enter into the cost of mining coal and transporting it.

Mr. SHEARN. You estimate that that increased cost will amount to 50 cents a ton?

Mr. Ross. If the court please, I object.

* * * * * * *

Mr. SHEARN. Don't you know from your experience and knowledge of the business that the increase in wages will not make a difference of over fifteen cents a ton in the cost of producing anthracite coal?

Mr. Ross. I object for the same reason. It is immaterial and irrelevant to this issue.

The CHAIRMAN. The objection is overruled.

Mr. Ross. I advise the witness that he need not answer.

Mr. SHEARN. Do you decline to answer, Mr. Truesdale?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. The witness is directad to answer.

Mr. Ross. The same objection and same ruling.

At the session on May 1, 1903, Samuel T. Peters was called as a witness on behalf of the complainant, and having been duly sworn, the following proceedings were had:

Mr. SHEARN. You are a coal merchant, are you not, seller of coal?

Mr. PETERS. I am.

Mr. SHEARN. In the City of New York?

Mr. PETERS. Yes.

Mr. SHEARN. What is your full name?

Mr. PETERS. Samuel T. Peters.

Mr. SHEARN. You are a member of the firm of Williams & Peters?

Mr. PETERS. I am.

Mr. SHEARN. For what companies are you the sales agent?

Mr. PETERS. We handle the produce of the Hillside Coal & Iron Company, Pennsylvania Coal Company, and the New York, Susquehanna & Western.

* * * * * * *

Mr. SHEARN. Do you buy from other companies than those?

Mr. PETERS. We do.

Mr. SHEARN. What other companies?

Mr. PETERS. We buy from other companies than those, we buy from almost all the companies that are represented, have for twenty-five years.

Mr. SHEARN. Do you sell coal for the Hillside Coal & Iron Company and the Susquehanna & Western Coal Company and the Pennsylvania Coal Company on commission?

Mr. PETERS. We do.

Mr. SHEARN. Is the commission the same for each of those companies?

Mr. PETERS. It is.

Mr. SHEARN. How much is it a ton?

Mr. PETERS. I decline to answer.

Mr. MOOT. One moment. Here is a merchant selling coal on commission, not a party to this proceeding.

The CHAIRMAN. Have you any objection to stating what your commission is?

Mr. PETERS. I have, sir.

Mr. SHEARN. Perhaps he has, but that does not follow that he shall be excused from stating it. Without going over it all again—we have been over it many times before; it is important to us to find out how much is left to these companies out of the proceeds of the sale of coal at tidewater, and the only way to get at that is to show all the different elements. One element is commission.

The CHAIRMAN. You might as well go to the point and let this whole question go to the courts. Now you ask him what his commission is?

Mr. SHEARN. Yes.

The CHAIRMAN. And to that objection is taken and the objection is overruled.

24 Mr. SHEARN. How much commission do you get per ton?

Mr. MOOT. I object.

Mr. SHEARN. That objection has been passed upon.

The CHAIRMAN. It is for the witness to say whether he declines to answer.

Mr. MOOT. I advise the witness to say that he declines to answer on the ground that he is not a party to this proceeding, that he has nothing to do with the rate, or with any charge that is brought.

Mr. SHEARN. Does counsel appear for this witness?

Mr. MOOT. Yes.

Mr. PETERS. With all due respect to you, Mr. Commissioner, I decline to answer.

The CHAIRMAN. The Commission directs the witness to answer the question and notwithstanding that direction he declines.

Mr. SHEARN. Do you?

Mr. PETERS. On advice of counsel.

Mr. SHEARN. And for no other reason?

Mr. PETERS. For no other reason."

That when the said witnesses refused to answer said questions your petitioner was engaged, as aforesaid, at room 70 in the post office building, New York City, in the State of New York, in the discharge of its duty

to execute and enforce the provisions of said act to regulate commerce, and in the exercise of its authority to inquire into the management of the business of common carriers subject to the provisions of said act, and to keep itself informed as to the manner and method in which said business is conducted, and to obtain from said common carriers full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created; and your petitioner is of the opinion that the said questions are not only relevant and material to the issues on trial in said proceeding, but answers thereto are necessary in order to enable your petitioner to discharge its duty and execute and enforce the provisions of said act to regulate commerce and to inform your petitioner as to the manner and method in which the business of said common carriers is conducted, and to enable your petitioner to obtain the full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created.

That for the purposes of this petition, the stenographer's minutes of all of said hearings and the exhibits introduced in evidence are made part hereof, so far as may be material or necessary.

That subsequent to said proceedings, and prior to the verification of this petition, the Attorney-General of the United States, at the request of your petitioner, instructed the United States district attorney for the southern district of New York, as your petitioner is informed and believes, to present this petition and institute before the proper court and to prosecute all necessary proceedings for the enforcement of the provisions of the acts to regulate commerce as amended, and to invoke the aid of the court in requiring the attendance and testimony of said recalcitrant witnesses and the production of said books, papers, and documents, pursuant to the provisions of said acts to regulate commerce as amended.

Wherefore your petitioner prays that an order or orders be made requiring the attendance and testimony before your petitioner of each of the aforesaid witnesses, and the making by each of said witnesses of full answer to each of the questions, respectively, refused to be answered by said witnesses, and requiring said witnesses to produce before your petitioner the books, papers, and documents hereinabove referred to and described and refused to be produced as hereinbefore set forth, and for such other and further relief as may be just and proper in the premises. And your petitioner will ever pray.

THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
[SEAL.] *The Secretary thereof, thereunto duly authorized.*

EXHIBIT A.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST, PETITIONER AND complainant,
against
PHILADELPHIA AND READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jewsey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company and Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, defendants.

The petition and complaint of William Randolph Hearst respectfully shows:

That your petitioner is a citizen of the United States, residing in the city of New York, and is of necessity a purchaser of anthracite coal. That your petitioner has been injured by reason of the matters herein complained of, and unless the relief sought herein is granted, your petitioner and thousands of other persons similarly situated in the various localities hereinafter mentioned, and also independent producers of anthracite coal, on whose behalf, as well as on petitioner's own behalf this complaint is made, will sustain further and irreparable injury.

That the defendants above named are common carriers severally engaged in the transportation of passengers and property between points in different States of the United States, and particularly are engaged in the transportation of anthracite and bituminous coals mined in the States of Pennsylvania, Maryland, and West Virginia, and shipped as interstate traffic over their several routes or lines, and as such common carriers are subject to the provisions of an act entitled "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplemental thereto."

That the rates charged and exacted by said defendants and each of them for the transportation or anthracite coal in carloads from points in the anthracite coal region of Pennsylvania to New York City and New York Harbor points and internal points of destination in the State of New York, to Boston, Boston points, and other points in the New England States, to Baltimore and other points in the State of Maryland, and to Washington, in the District of Columbia, are unreasonable and unjust, and subject consumers of that commodity at such points of destination, and producers of such coal who are not common carriers or corporations owned and controlled by common carriers, to undue and unreasonable prejudice and disadvantage in favor, and to the undue and unreasonable preference and advantage, of said defendants and companies or corporations under the control, in violation of sections 1 and 3 of said act to regulate commerce.

That the rates charged and exacted by the defendants for the trans-

and unjust and unjustly discriminating and unduly prejudicial to the interests of dealers and consumers of that commodity as compared with the rates contemporaneously charged and enforced by said defendants for the transportation of bituminous coal for much longer distances and to all the points of destination hereinabove mentioned, and also as compared with defendants' rates and charges on other carload freight traffic generally, all of which is in violation of sections 1, 2, and 3 of said act to regulate commerce. That the defendants' schedules of rates and charges, as on file with this Commission, are hereby referred to and made part of this petition and complaint.

That the defendants Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company, New York, Susque-
26 hanna & Western Railroad Company and the Philadelphia & Reading Railway Company are, in the absence of agreement, natural competitors in the business of transporting anthracite coal from the anthracite coal fields in Pennsylvania to tide water at New York Harbor; two of said defendants, the Lehigh Valley Railroad Company and the Central Railroad Company of New Jersey, being substantially parallel lines.

That during the years 1896, 1897, 1898, 1899, 1900, and 1901 the said six defendants last named, by an agreement with one another and by combination between one another pooled, and having during the year 1902, by an agreement and combination as aforesaid, pooled freights and freight traffic in anthracite coal so as to divide the same between their different lines in agreed proportions, and have divided between them the aggregate or net proceeds of their earnings from the transportation of anthracite coal in agreed proportions, in violation of section 5 of the act to regulate commerce.

That during the said period said six defendants have by agreement and combination between themselves maintained a common rate for the transportation of anthracite coal from the coal fields to tide water, to wit: That during the years 1896 to 1900, inclusive, the rate of 40 per cent of the f. o. b. price of anthracite coal at tide water, and during the years 1901 and 1902, the rate of 35 per cent of the f. o. b. prices of anthracite coal at tide water. That during said year said six defendants have by an agreement and combination between themselves divided the gross tonnage of anthracite coal transported from said coal fields to tide water in substantially the following proportions:

Lehigh Valley Railroad Company	22.88%	thereof
Central Railroad Company of New Jersey	17.12 "	"
Delaware, Lackawanna & Western Railroad Company	19.52 "	"
Erie Railroad Company	5.84 "	"
New York, Susquehanna & Western Railroad Company	4.68 "	"
Philadelphia & Reading Railway Company	29.96 "	"

That by means of maintaining said common freight rates and dividing the tonnage of anthracite coal to be transported over the lines of said defendants in substantially the said proportions, the aggregate or net proceeds of the earnings of the said defendants from the transportation of

anthracite coal have been pooled and divided among said defendants in substantially the said percentages and proportions, in violation of sec. 5 of said act to regulate commerce.

Your petitioner further alleges and complains that there was included in said freight rate of 40 per cent of the f. o. b. prices of anthracite coal at tide water during the years 1896 to 1900, inclusive, and in said freight rate of 35 per cent of the f. o. b. prices of anthracite coal during the years 1901 and 1902, in all cases where the coal transported was the property of coal mining companies, the capital stock of which was owned by said respective railroad companies, the cost of demurrage, handling, and other charges at tide water, amounting on the average to at least five per cent of the f. o. b. prices of anthracite coal at tide water, but that in said respective rates of 40 per cent and 35 per cent of the f. o. b. prices at tide water charged to producers and dealers in anthracite coal who refused to sell their coal at the mines to said coal mining companies, the capital stock of which is owned by the said respective railroad companies, no allowance was or has been made by said railroad companies covering said items of demurrage, handling, and other charges at tide water. That thereby during said period the independent producers of and dealers in coal who refused to sell the product of their mines to said coal mining companies, the capital stock of which is owned by said railroad companies, have been discriminated against to the extent of at least five per cent of the f. o. b. prices of anthracite coal at tide water, in violation of section 2 of said act to regulate commerce.

Wherefore, your petitioner prays that the said defendants be severally required to make a full answer to the foregoing charges forthwith, and after due hearing and deliberation, for an order or orders commanding the said defendants, and each of them, wholly to cease and desist from each and every of the aforesaid violations of said act to regulate commerce to the full extent thereof, and for such further order or orders and action by this Commission as its duty to execute and enforce the provisions of said act and the cause of your petitioner and others similarly situated may appear to require.

Dated New York, October 31, 1902.

WILLIAM RANDOLPH HEARST.

27 STATE OF NEW YORK,
County of New York, ss:

William Randolph Hearst, being duly sworn, deposes and says: That he is the person mentioned as the petitioner and complainant in the foregoing petition and complaint; that he has read the same and that it is true to the best of his knowledge and belief; that the sources of his knowledge and the grounds of his belief as to the truth of the said allegations are reports made to petitioner by his agents and attorneys who have been investigating the matters complained of for several weeks past; also inspection of duly authenticated copies of contracts between several of said railroad companies.

WILLIAM RANDOLPH HEARST.

Subscribed and sworn to before me this 31st day of October, 1902.

[SEAL.] IRA E. MILLER,
Com. of Deeds, N. Y. City.

EXHIBIT B.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST, PETITIONER AND complainant,
against
THE CENTRAL RAILROAD COMPANY OF NEW Jersey and others, defendants.

The answer of the Central Railroad Compamy of New Jersey to the petition of William Randolph Hearst.

The Central Railroad Company of New Jersey answers the petition of William Randolph Hearst as follows:

(1) It has no knowledge or information sufficient to form a belief as to any injury caused to the petitioner by reason of the matters complained of, and therefore denies the same.

(2) It admits, as respects the proportion of the anthracite and bituminous coal carried by it over parts of its lines, that it is a common carrier, subject to the provisions of the act entitled: "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplemental thereto."

(3) It also admits that some of the defendants, of which it is one, are competitors in the business of transporting anthracite coal from the anthracite coal fields in Pennsylvania to tide water at New York Harbor.

(4) It denies each and every other allegation contained in said petition.

Wherefore this defendant asks that said petition be dismissed.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By G. O. WATERMAN, *Secretary and Treasurer.*

ROBERT W. DE FOREST,
General Counsel, 143 Liberty Street, New York.

28 STATE OF NEW YORK,
County of New York, ss:

G. O. Waterman, being duly sworn, says: That he is the secretary and treasurer of the Central Railroad Company of New Jersey, the defendant named in and making the foregoing answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

G. O. WATERMAN.

Sworn to before me this 19th day of November, 1902.

[SEAL.] WILLIAM MCBRIEN,
Notary Public, New York County.

Exhibit C.

Before the Interstate Commerce Commission.

William Randolph Hearst
vs.
Philadelphia and Reading Railway Company et al.

The separate answer of the respondent New York, Susquehanna & Western Railroad Company in the above proceeding respectfully shows:

1. Respondent denies that it has committed any unlawful acts in connection with the transportation of anthracite coal as alleged in the petition or otherwise, whereby petitioner or others have been damaged or injured, and alleges upon information and belief that petitioner has no authority to present this petition on behalf of so-called independent producers of anthracite coal or others.

2. Respondent admits that it is a common carrier in part engaged in the transportation of passengers and property (including anthracite and bituminous coal) between points in different States of the United States, and that it is subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto, so far as the same or any of them relate to interstate transportation and are in conformity with the provisions of the Constitution of the United States.

3. Respondent denies that the rates charged by it for the transportation of anthracite coal between the points on its line mentioned in said petition or any other points are unjust or unreasonable, or subject any consumers or producers of anthracite coal to undue or unreasonable prejudice, disadvantage, or unjust discrimination, or that there is any discrimination in such rates in favor of corporations which are common carriers of the stock of which is owned or controlled by respondent or other common carriers, in violation of sections 1 and 3 of said act to regulate commerce or otherwise.

4. Respondent denies that the rates charged by it for the transportation of anthracite coal subject the producers or consumers of or dealers in bituminous coal to any unjust or unreasonable discrimination, or that said rates are unreasonable or unjust as compared with the rates on other commodities in carloads, in violation of sections 1, 2, and 3 of said act to regulate commerce or otherwise.

5. Respondent admits that it transports anthracite coal in competition with the other common carriers named in folio 7 of the petition, or some of them.

29 6. Respondent denies that during the years named in folios 8 and 9 of the petition, or any other period, it entered into any agreement with the other respondents named in the petition, or any of them, or any other carrier or carriers, to pool freight or freight traffic in anthracite coal, or for the division of freight or freight traffic in anthracite coal either in the proportions named in folio 9 of the petition or otherwise, or that it has ever entered into any agreement with the said respondents or any of them or any other carrier or carriers for the division of the aggregate proceeds of earnings from the transportation of

anthracite coal, in violation of section 5 of the act to regulate commerce or otherwise.

7. Respondent denies any information as to the respective proportions of the traffic in anthracite coal which were transported by the respondents during the years named in the petition, but whatever said proportions may have been, this respondent denies that said proportions were in any way affected by agreement with respondents or any of them or any other carrier, or carriers, for the division of the tonnage of anthracite coal, so far as this respondent is concerned, in violation of section 5 of the act to regulate commerce or otherwise.

8. Respondent alleges that any uniformity of rates for the transportation of anthra coal by various carriers which may have existed has not been due to any agreement, pool or combination, but the natural and inevitable result of competitive conditions, which require in the case of anthracite coal as with other commodities, that traffic of the same character from the same or competing localities be carried at the same or substantially the same rates by competing carriers. Respondent alleges that in so far as the proportions of the tonnage of anthracite coal carried by various carriers may have remained to some degree constant it has not been due to any agreement, pool, or combination, but has been due to the fact that the carrier of anthracite coal is determined in large measure by the location of the mines from which it is produced with respect to lines of railroad, as the product of any mine is naturally shipped over the line or lines reaching it.

9. Respondent denies that it has subjected so-called independent producers of or dealers in anthracite coal to any discrimination by the imposition or remission of charges for demurrage or for handling of coal at tidewater in favor of any corporation or corporations the capital stock of which is owned by it or any other person or corporation whatever, in violation of section 2 of the act to regulate commerce or otherwise.

10. Respondent denies each and every other allegation in said petition contained not hereinbefore specifically admitted or denied.

Wherefore, respondent prays that the petition herein may be dismissed.

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY.

By F. D. UNDERWOOD, *President.*

Dated New York, November 20th, 1902.

STATE OF NEW YORK,
County of New York, ss:

F. D. Underwood, being duly sworn, deposes and says: That he is an officer, to wit, president of New York, Susquehanna & Western Railroad Company, one of the respondents herein; that he has read the foregoing separate answer of said respondent, and that it is true to his own knowledge, except as to matters therein alleged to be stated on information and belief, and as to those he believes it to be true.

F. D. UNDERWOOD.

Sworn to before me this 20th day of November, 1902.

[L. S.]

A. L. TRAVIS,
Notary Public, Kings County.

Certificate filed in New York County.

30 EXHIBIT D.

Before the Interstate Commerce Commission.

WILLIAM RANDOLH HEARST, PETITIONER AND complainant,
against
THE DELAWARE, LACKAWANNA AND WESTERN Railroad Company et. al., defendants.

The answer of the defendant, The Delaware, Lackawanna and Western Railroad Company, to the petition and complaint of William Randolph Hearst.

I.

This defendant is not sufficiently informed to form a belief as to the citzenship or residence of the petitioner, or as to the necessity for his purchasing anthracite coal from this defendant.

It denies that the petitioner has the right to institute this proceeding on behalf of the producers shipping coal over the line of this defendant's railroad, and asks that the petitioner be required to produce his authority for appearing before this honorable Commission in their behalf.

It also denies that the petitioner has the right to institute this proceeding on behalf of thousands of other persons similarly situated to himself, and asks that he be required to produce his authority in support of this allegation, and denies that such thousands of persons similarly situated to him, or that the independent producers of anthracite coal located on the line of this defendant or elsewhere have sustained, or will sustain, irreparable injury through any of the alleged unlawful acts of this defendant.

II.

This defendant admits that it is a common carrier engaged in the transportation of passengers and property between different points in the States of New York, New Jersey, and Pennsylvania, and it alleges that it was duly chartered in 1832 under the laws of the State of Pennsylvania, and that it has full power to own coal lands and property and to mine, purchase, transport, and vend coal.

It admits also that, so far as relates to its interstate carriage of passengers and property, it is subject to the provisions of the act of Congress entitled "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto," so far as said acts may be in conformity to the provisions of the Constitution of the United States.

It alleges that it has no joint tariff or any other agreement concerning rates on anthracite coal with any other railroad, or with any of the defendants above named to any point in the State of New York.

It also alleges that it has not entered into any arrangement whereby rates are pooled or whereby any profits accruing upon such shipments are shared with any of the defendants named in the petitioner's complaint.

It also charges that it has no freight rates governing shipments of anthracite coal to Boston or other points in New England States, and no rates to Baltimore or other points in the State of Maryland, and that it has no rates to Washington, in the District of Columbia.

This defendant also alleges that there are no bituminous coal mines located upon its line of railroad, and it does not make a business, therefore, of hauling bituminous coal. It admits, however, that when such shipments of bituminous coal are tendered to it by any other connecting railroad and destined to points on its line, it transports such coal in pursuance of its duty as a common carrier, and in accordance with the published rates upon such bituminous coal.

31 It denies that its rates upon anthracite coal to New York are unreasonable or unjust, and that they subject any consumers or producers of coal to undue and unreasonable prejudice and disadvantage or give to any consumers or producers thereof any undue or unreasonable preference or advantage, and it denies that in making and charging such rates it violates section 1 or 3 of said act to regulate commerce.

This defendant denies that its rates for the transportation of anthracite coal are relatively unreasonable, unjust, prejudicial, or discriminating as compared with its rates on bituminous coal or on other classes of carload freight, and alleges that its rates upon anthracite coal to New York include delivery free on board vessels for reshipment.

This defendant denies that it violating sections 1, 2, or 3 of said act to regulate commerce.

III.

This defendant denies that it has entered into any unlawful agreement or combination with any of the railroad companies named in folio 7, whereby it has pooled freights and freight traffic in anthracite coal so as to divide the same between said different lines in agreed proportions or so that it would be a party to a division of the net proceeds of the earnings from the transportation of anthracite coal in agreed proportions, in violation of section 5 of the act to regulate commerce.

It denies all the averments in folios 7, 8, 9, and 10 of said petition as to pooling and division of freight rates on, and freight traffic in, anthracite coal, and as to the maintenance by agreement of a common rate for the transportation thereof during the years named.

IV.

This defendant denies that it discriminates against any producer or shipper or class of producers or shippers of anthracite coal by reason of the rates charged thereon, as set forth in folios 10 and 11 of said petition, in violation of section 2 of said act to regulate commerce.

It alleges that it purchases coal at the mines of many of the operators located along its line at the market price, as it has the right to do under and in pursuance of the laws of the State of Pennsylvania.

Wherefore this defendant prays that the complaint herein, so far as it relates to this defendant, may be dismissed.

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY,
By W. H. TRUESDALE, *President.*

WALTER W. ROSS, *Counsel.*

STATE OF NEW YORK,
County of New York, ss:

William H. Truesdale, being duly sworn, says that he is the President of the Delaware, Lackawanna & Western Railroad Company, one of the defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

W. H. TRUESDALE.

Sworn and subscribed to before me this 28th day of November, 1902.

W. J. COLWELL.

32 EXHIBIT E.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST, PETITIONER AND complainant,
vs.
PHILADELPHIA & READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawana & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, The Pennsylvania Railroad Company, and the Baltimore & Ohio Railroad Company, defendants.

Separate answer of the Pennsylvania Railroad Company.

The Pennsylvania Railroad Company, one of the defendants in the above proceeding, for answer to the several matters therein complained of against it respectfully states as follows:

1. This defendant admits that it is a common carrier, and as such is engaged and participant in the transportation of passengers and property between points in different States of the United States; and also admits that, inter alia, it is engaged, either directly or intermediately, in the transportation of anthracite and bituminous coals, mined in the State of Pennsylvania, and destined either to points in the said last-named State or to points in other States. This defendant also admits that as such common carrier of coals transported between different States it is subject to the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, in so far as the same are constitutionally enforceable.

2. This defendant denies that the rates of freight charged and exacted by it for the transportation of such anthracite coal as is moved in carloads over its lines from points in the anthracite coal region of Pennsylvania to New York City, New York Harbor points, and other points specified in the complainant's petition, are unreasonable or unjust, or in any wise unduly and unreasonably prejudicial or disadvantageous, or unduly or unreasonably preferential or advantageous, or in any respect violative of sections 1 and 3 of said act to regulate commerce, as set forth and charged in said complainant's petition, but, on the contrary thereof, this defendant avers that its said rates are just and reasonable, and not obnoxious to the provisions of the said act to regulate commerce.

3. This defendant also expressly denies that its aforesaid rates on anthracite coal are relatively unreasonable and unjust, and unjustly discriminative and unduly prejudicial to the interests of dealers and consumers of that commodity as compared with the defendant's freight rates for the transportation of bituminous coal, and also as compared with said defendant's rates and charges on other general freight traffic transported in carloads, or that its said rates are violative of sections 1, 2, and 3 of said act to regulate commerce, as is also set forth and charged by the said petition, but, on the contrary thereof, this defendant avers that its said rates on anthracite coal are not only just and reasonable in themselves considered, but are likewise just and reasonable in comparison with its rates on bituminous coal, and also its rates on other general traffic in carloads; and further avers that the transportation features, service, and other conditions necessarily incidental to, and con-
33 nected with, the carriage of anthracite coal, are so substantially dissimilar and differential from the service and other conditions incident to the transportation of bituminous coals, and other general traffic in carloads, that the freight rates for the latter do not furnish any just or equitable basis of comparison or contrast with the former.

4. The defendant further expressly denies that any discrimination or difference is made by it with respect to the cost of demurrage, handling, or other charges on coal at tidewater between the different shippers of anthracite coal over its lines, as set forth and charged in the said petition, but on the contrary avers that anthracite coal at tidewater is handled over defendant's piers alike for all shippers without charge; and in respect to demurrage or other charges it also avers that all shippers are dealt with and treated alike.

Wherefore this defendant, having duly answered the several matters charged against it in the said petition, prays that the complaint in this proceeding, as to it, be dismissed.

THE PENNSYLVANIA RAILROAD COMPANY,
(Signed) By WILLIAM H. JOYCE,
Freight Traffic Manager.

(Signed) GEO. V. MASSEY,
F. D. MCKENNEY,
WAYNE MACVEAGH,
Attorneys for the Pennsylvania Railroad Company.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

William H. Joyce, being duly sworn, says that he is freight-traffic manager of the Pennsylvania Railroad Company, one of the defendants in the above proceeding, and that the foregoing answer of said company is true as he verily believes.

(Signed) WILLIAM H. JOYCE.

Subscribed and sworn to before me this thirteenth day of November, A. D. 1902.

(Signed) HIRAM H. POTTS,
Notary Public. [SEAL.]

Commission expires Feb. 26, 1905.

EXHIBIT F.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST
vs.
PHILADELPHIA & READING RAILWAY COMPANY et al.

The separate answer of the respondent, Erie Railroad Company, in the above proceeding respectfully shows:

1. Respondent denies that it has committed any unlawful acts in connection with the transportation of anthracite coal as alleged in the petition or otherwise, whereby petitioner or others have been damaged or injured, and alleges upon information and belief that petitioner has no authority to present this petition on behalf of so-called independent producers of anthracite coal or others.

2. Respondent admits that it is a common carrier in part engaged in the transportation of passengers and property, including anthra-
34 cite and bituminous coal, between points in different States of the United States, and that it is subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto, so far as the same or any of them relate to interstate trasportation, and are in uniformity with the provisions of the Constitution of the United States.

3. Respondent denies that the rates charged by it for the transportation of anthracite coal between the points on its line mentioned in said petition, or any other points, are unjust or unreasonable, or subject any consumers or producers of anthracite coal to undue or unreasonable prejudice, disadvantage or unjust discrimination, or that there is any discrimination in such rates in favor of corporations which are common carriers, or the stock of which is owned or controlled by respondent or other common carriers in violation of sections 1 and 3 of said act to regulate commerce or otherwise.

4. Respondent denies that the rates charged by it for the transportation of anthracite coal subject the producers or consumers of or dealers in bituminous coal to any unjust or unreasonable discrimination, or that said rates are unreasonable or unjust as compared with the rates on other commodities in carloads, in violation of sections 1, 2, and 3 of said act to regulate commerce or otherwise.

5. This respondent admits that it transports anthracite coal in competition with the other common carriers named in folio 7 of the petition, or some of them.

6. Respondent denies that during the years named in folios 8 and 9 of the petition, or any other period, it entered into any agreement with the other respondents named in the petition, or any of them, or any other carrier or carriers, to pool freight or freight traffic in anthracite coal, or for the division of freight or freight traffic in anthracite coal either in the proportions named in folio 9 of the petition or otherwise, or that it has ever entered into any agreement with the said respondents or any of them or

any other carrier or carriers for the division of the aggregate proceeds of earnings from the transportation of anthracite coal, in violation of section 5 of the act to regulate commerce or otherwise.

7. Respondent denies any information as to the respective proportions of the traffic in anthracite coal which were transported by the respondents during the years named in the petition, but whatever said proportions may have been, this respondent denies that said proportions were in any way affected by agreement with the respondents or any of them or any other carrier or carriers for the division of the tonnage of anthracite coal, so far as this respondent is concerned, in violation of section 5 of the act to regulate commerce or otherwise.

8. Respondent alleges that any uniformity of rates for the transportation of anthracite coal by various carriers which may have existed has not been due to any agreement, pool, or combination, but the natural and inevitable result of competitive conditions, which require, in the case of anthracite coal, as with other commodities, that traffic of the same character from the same or competing localities be carried at the same or substantially the same rates by competing carriers. Respondent alleges that in so far as the proportions of the tonnage of anthracite coal carried by various carriers may have remained to some degree constant, it has not been due to any agreement, pool, or combination, but has been due to the fact that the carrier of anthracite coal is determined in large measure by the location of the mines from which it is produced with respect to lines of railroad, as the product of any mine is naturally shipped over the line or lines reaching it.

9. Respondent denies that it has subjected so-called independent producers of or dealers in anthracite coal to any discrimination by the imposition or remission of charges for demurrage or for handling of coal at tide water in favor of any corporation or corporations, the capital stock of which is owned by it, or any other person or corporation whatever, in violation of section 2 of the act to regulate commerce or otherwise.

10. Respondent denies each and every other allegation in said petition contained not hereinbefore specifically admitted or denied.

Wherefore respondent prays that the petition herein may be dismissed.

ERIE RAILROAD COMPANY,
By F. D. UNDERWOOD, *President.*

Dated New York, November 20th, 1902.

35 STATE OF NEW YORK,
City and County of New York, ss.:

F. D. Underwood, being duly sworn, deposes and says that he is an officer, to wit, president of Erie Railroad Company, one of the respondents herein, that he has read the foregoing separate answer of said respondent, and that it is true to his own knowledge, except as to matters therein alleged to be stated upon information and belief, and as to these he believes it to be true.

F. D. UNDERWOOD.

Sworn to before me this 20th day of November, 1902.

[L. S.] A. L. TRAVIS,
Notary Public, Kings County.

Certificate filed in New York County.

Exhibit G.

Before the Interstate Commerce Commission.

William Randolph Hearst, petitioner and complainant,
against
Philadelphia & Reading Railroad Company, The Delaware & Hudson Company, and others, defendants.

The answer of the defendant, The Delaware & Hudson Company, to the petition and complaint of William Randolph Hearst:

First. This defendant has no knowledge or information sufficient to form a belief of the allegations of the petition that the petitioner is necessarily a purchaser of anthracite coal, or that the petitioner has been injured by reason of the matters alleged in the petition, or that unless the relief sought is granted the petitioner or any other persons or any independent purchasers of anthracite coal will sustain any injury.

Second. This defendant is a common carrier engaged in the transportation of anthracite and bituminous coal over its lines, which extend generally from Wilkesbarre to Rouses Point, and it is informed and believes that the other defendants named in the said petition are also common carriers. This defendant transports no coal to New York City or New York Harbor points, or to Boston or Boston points, or to Baltimore or other points in the State of Maryland, or to Washington, in the District of Columbia.

Third. There are no shippers of anthracite coal over this defendant's lines and consequently there are no rates charged or exacted by it for such shipments. All anthracite coal which goes over this defendant's lines is the property of this defendant, produced at its mines in the State of Pennsylvania, and any charge against the proceeds thereof for transportation is, of course, merely an element in the price at which the defendant sells its property. The petitioner, so far as this defendant is aware, has never purchased any coal from it and consumes no coal at any points reached by this defendant. This defendant denies that it charges or exacts for the transportation of anthracite coal to any points or rates which are unreasonable or unjust or subject consumers or purchasers of such coal to any undue or unreasonable prejudice or disadvantage, or give to this defendant or any corporation under its control any undue or unreasonable preference or advantage.

Fourth. This defendant denies that it charges or exacts any rates for the transportation of anthracite coal which are relatively unrea-
36 sonable or unjust or unjustly discriminating or unduly prejudicial to the interests of dealers or consumers of that commodity as compared with the rates contemporaneously charged or enforced by this defendant for the transportation of bituminous coal to any distances whatsoever or as compared with defendant's rates or charges on other car-load freight traffic generally, or that it violates any provisions of the act to regulate commerce in that behalf alleged in the petition.

Fifth. This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of the petition.

THE DELAWARE AND HUDSON COMPANY,
By H. G. YOUNG, *2nd Vice-President.*

STATE OF NEW YORK,
County of Albany, ss:

H. G. Young, being duly sworn, says: That he is the 2d vice-president of the Delaware and Hudson Company, the defendant above named; that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged, on information and belief, and that as to those matters he believes it to be true; that the grounds of deponent's belief as to all matters in said answer not stated upon his knowledge are his familiarity with said defendant's business affairs as said 2d vice-president therof; that the reason why this verification is not made by the said defendant is that the said defendant is a domestic corporation and unable to make the same.

H. G. YOUNG.

Sworn to before me this 20th day of November, 1902.

H. W. COWLBECK,
Notary Public.

EXHIBIT H.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST, PETITIONER and complainant,
vs.
PHILADELPHIA AND READING RAILWAY Company and others, defendants.

The answer of the Philadelphia and Reading Railway Company to the petition of William Randolph Hearst.

Philadelphia and Reading Railway Company, one of the defendants named herein, for answer to the several matters and things charged and set forth in the said petition respectfully shows that:

1. This defendant admits that, in respect of a comparatively small proportion of the anthracite and bituminous coal carried by it over portions of its lines, it is a common carrier subject to the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto, so far as the same are valid.

2. This defendant, however, denies that it is doing, or has done, or committed any act or thing whatsoever, or has omitted or is omitting any duty in violation of the said act or its said amendments or supplements, and it specifically denies in general and in detail each and every charge, statement, or inference contained in the said petition to the contrary thereof, and also each and every charge of unlawful combination, confederation, or agreement respecting any of the said several matters and things.

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3. And further answering in respect of the said charges of unlawful combination, confederation, agreement, pooling, &c., &c., contained in

the said petition, and especially in respect of the charges embodied in the 7th folio of the said petition in the words and figures following, that is to say:

"That during the years 1896, 1897, 1898, 1899, 1900, and 1901 the said six defendants last named, by an agreement with one another and by combination between one another pooled, and have during the year 1902, by an agreement and combination as aforesaid, pooled freights and freight traffic in anthracite coal so as to divide the same between their different lines in agreed proportions, and have divided between them the aggregate or net proceeds of their earnings from the transportation of anthracite coal in agreed proportions, in violation of section 5 of act to regulate commerce."

This defendant says that the said charge in general and in detail is false and untrue.

And concerning the matters and things set forth in the following paragraphs of the said petition, beginning in the 8th folio and ending in the 10th, in the words and figures following, that is to say:

"That during the said perion said six defendants have by agreement and combination between themselves maintained a common rate for the transportation of anthracite coal from the coal fields to tide water, to-wit: That during the years 1896 and 1900, inclusive, the rate of 40 per cent of the f. o. b. price of anthracite coal at tide water, and during the years 1901 and 1902 the rate of 35 per cent of the f. o. b. prices of anthracite coal at tide water. That during said years said six defendants have by an agreement and combination between themselves divided the gross tonnage of anthracite coal transported from said coal fields to tide water in substantially the following proportions:

Lehigh Valley Railroad Company	22.88%	thereof
Central Railroad Company of New Jersey	17.12"	"
Delaware, Lackawanna and Western Railroad Company	19.52"	"
Erie Railroad Company	5.84"	"
New York, Susquehanna and Western Railroad Company	4.68"	"
Philadelphia and Reading Railway Company	29.96"	"

That by means of maintaining said common freight rates and dividing the tonnage of anthracite coal to be transported over the lines of said defendants in substantially the said proportions, the aggregate or net proceeds of the earnings of the said defendants from the transportation of anthracite coal have been pooled and divided among said defendants in substantially the said percentages and proportions in violation of sec. 5 of said act to regulate commerce."

This defendant avers that each and every charge contained in the said paragraph of unlawful agreement, combination, or confederation in any manner or form, or for any purpose whatsoever, is false and untrue.

Wherefore this defendant prays to be dismissed hence.

PHILADELPHIA AND READING RAILWAY COMPANY,
By JOHN H. JONES, *Coal Freight Agent.*

CHARLES HEEBNER,
J. D. CAMPBELL,
General Solicitor. } *Attorneys.*
Reading Terminal, Philadelphia, Pa.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

John H. Jones, being duly sworn, says he is the coal freight agent of the Philadelphia and Reading Railway Company, one of the defendants in the proceeding above stated, and that the foregoing answer of his said company is true.

JOHN H. JONES.

Sworn to and subscribed this 17th day of November, 1902, before me.
[NOTARIAL SEAL.]

C. K. KLINK,
Notary Public.

Commission expires April 16, 1903.

EXHIBIT K.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST, PETITIONER and complainant,
against
PHILADELPHIA & READING RAILWAY COMPANY and others, defendants.

To the Interstate Commerce Commission:

Application is hereby made for the issuance of subpœnaes duces tecum, returnable April 21, 1903, upon the hearing set in the above-entitled matter, as follows:

George F. Baer, president, W. R. Taylor, secretary,	Philadelphia & Reading Railway Company.
George F. Baer, president, W. G. Brown, secretary,	The Philadelphia & Reading Coal & Iron Company.
George F. Baer, president, G. O. Waterman, secretary,	Central Railroad Company of New Jersey.
George F. Baer, president, G. O. Waterman, secretary,	Lehigh & Wilkesbarre Coal Company.
Eben B. Thomas, president, David G. Baird, secretary,	Lehigh Valley Railroad Company.
Eben B. Thomas, president, David G. Baird, secretary,	Lehigh Valley Coal Company.
F. D. Underwood, president, G. A. Richardson, secretary,	Erie Railroad Company.
F. D. Underwood, president, G. A. Richardson, secretary,	Pennsylvania Coal Company.
F. D. Underwood, president, G. A. Richardson, secretary,	New York, Susquehanna & Western Railway Company.
F. D. Underwood, president, G. A. Richardson, secretary,	Hillside Coal & Iron Company.
William H. Truesdale, president, Fred F. Chambers, secretary,	Delaware, Lackawanna and Western Railroad Company.
Thomas P. Fowler, president, R. D. Rickard, secretary,	New York, Ontario & Western Railway Company.
Thomas P. Fowler, president, R. D. Rickard, secretary,	Elk Hill Coal & Iron Company.

Each of said persons to produce all contracts for the purchase or transportation of anthracite coal entered into since January 1, 1901, between the company of which each of said persons respectively is an officer, and any and all producers of anthracite coal, or owners or operators of anthracite coal mines.

W. A. Church, treasurer, Philadelphia and Reading Railway Company: To produce all books of account of the Philadelphia and Reading Railway Company containing cash, journal, or ledger entries of all transactions with, and all receipts from, the Philadelphia and Reading Coal and Iron Company since July 1, 1901, and all books of account of said Philadelphia & Reading Railway Company containing cash, journal, or ledger entries of all receipts by the Philadelphia and Reading Railway Company for the transportation of anthracite coal since July 1, 1901.

39 W. A. Church, treasurer, the Philadelphia and Reading Coal and Iron Company: To produce all books of account of said Company containing cash, journal, or ledger entries of all transactions with, and payments to, Philadelphia and Reading Railway Company since July 1, 1901, and containing cash, journal, or ledger entries of all purchases of anthracite coal by The Philadelphia and Reading Coal and Iron Company, and payments therefor, since July 1, 1901; also all checks and check stubs used for the payment to the Philadelphia and Reading Railway Company made by the Philadelphia and Reading Coal and Iron Company for the transportation of anthracite coal since July 1, 1901, and for the payment for all coal purchased by the Philadelphia and Reading Coal and Iron Company since July 1, 1901.

G. O. Waterman, treasurer, Central Railroad Company of New Jersey: To produce all books of account of the Central Railroad Company of New Jersey containing cash, journal, or ledger entries of all transactions with and receipts from Lehigh & Wilkesbarre Coal Company since July 1, 1901, and containing cash, journal, or ledger entries of all receipts by the Central Railroad Company of New Jersey for the transportation of anthracite coal since July 1, 1901.

G. O. Waterman, treasurer, Lehigh and Wilkesbarre Coal Company: To produce all books of account of Lehigh and Wilkesbarre Coal Company containing cash, journal, or ledger entries of all transactions with, and payments to, Central Railroad Company of New Jersey, and containing cash, journal, or ledger entries of all purchases of anthracite coal by Lehigh & Wilkesbarre Coal Company, and payments, therefor, since July 1, 1901; also all checks and check stubs used for the payment to the Central Railroad Company of New Jersey for the transportation of anthracite coal since July 1, 1901, and for the payment of coal purchased by the Lehigh & Wilkesbarre Coal Company since July 1, 1901.

William C. Alderson, treasurer, Lehigh Valley Railroad Company: To produce all books of account of the Lehigh Valley Railroad Company containing cash, journal, or ledger entries of all receipts by the Lehigh Valley Coal Company since July 1, 1901, and containing cash, journal, or ledger entries of all receipts by the Lehigh Valley Railroad Company for the transportation of anthracite coal since July 1, 1901.

William C. Alderson, treasurer, Lehigh Valley Coal Company: To produce all books of account of Lehigh Valley Coal Company, containing cash, journal, or ledger entries of all transactions with, and payments

to, Lehigh Valley Railroad Company, and containing, cash, journal, or ledger entries of all purchases of anthracite coal by the Lehigh Valley Coal Company, and payments therefor, since July 1, 1901; also all checks and check stubs used for the payment to the Lehigh Valley Railroad Company for the transportation of anthracite coal since July 1, 1901, and for the payment for coal purchased by the Lehigh Valley Coal Company since July 1, 1901.

J. W. Platten, treasurer, Erie Railroad Company: To produce all books of account of the Erie Railroad Company containing, cash, journal, or ledger entries of all transactions, with and receipts from Hillside Coal & Iron Company, and from the Pennsylvania Coal Company, since July 1, 1901, and containing cash, journal, or ledger entries of all receipts by the Erie Railroad Company for the transportation of anthracite coal since July 1, 1901.

J. W. Platten, treasurer, Hillside Coal and Iron Company: To produce all books of account of Hillside Coal & Iron Company containing cash, journal, or ledger entries of all transactions with, and payments to, Erie Railroad Company, and containing cash, journal, or ledger entries of all purchases of anthracite coal by the Hillside Coal & Iron Company, and payments therefor, since July 1, 1901; also all checks and check stubs used for the payment to the Erie Railroad Company for the transportation of anthracite coal since July 1, 1901, and for the payment for coal purchased by the Hillside Coal & Iron Company since July 1, 1901.

J. W. Platten, treasurer, Pennsylvania Coal Company: To produce all books of account of Pennsylvania Coal Company containing cash, journal, or ledger entries of all transactions with, and payments to, Erie Railroad Company, and containing cash, journal, or ledger entries of all purchases of anthracite coal by the Pennsylvania Coal Company, and payments therefor, since July 1, 1901; also all checks and check stubs used for the payment to the Erie Railroad Company for the transportation of anthracite coal since July 1, 1901, and for the payment for coal purchased by the Pennsylvania Coal Company since July 1, 1901.

Fred. F. Chambers, treasurer, Delaware, Lackawanna & Western Railroad Company: To produce all books of account of the Delaware, Lackawanna & Western Railroad Company containing cash, journal, or ledger entries of all transactions for the purchase by said railroad company of anthracite coal since July 1, 1901, and containing cash, journal, or ledger entries of all receipts by said railroad company for the transportation of anthracite coal since July 1, 1901.

J. W. Platten, treasurer, New York, Susquehanna & Western Railroad Company: To produce all books of account of the New York, Susquehanna & Western Railroad Company containing cash, journal, or ledger entries of all transactions for the purchase by said railroad company of anthracite coal since July 1, 1901, and containing cash, journal, or ledger entries of all receipts by said railroad company for the transportation of anthracite coal since July 1, 1901.

Richard D. Rickard, treasurer, New York, Ontario and Western Railway Company: To produce all books of account of said railway company containing cash, journal, or ledger entries of all transactions with, and receipts from, the Elk Hill Coal & Iron Company since July 1, 1901,

and containging cash, journal, or ledger entries of all receipts by said railway company for the transportation of anthracite coal since July 1, 1901.

Richard D. Rickard, treasurer, Elk Hill Coal & Iron Company: To produce all books of account of said company containing cash, journal, or ledger entries of all transactions with, and payments to, New York, Ontario & Western Railway Company, and containing cash, journal, or ledger entries of all purchases of anthracite coal by the Elk Hill Coal & Iron Company, and payments therefor since July 1, 1901; also all checks and check stubs used for the payment to the New York, Ontario & Western Railway Company for the transportation of anthracite coal since July 1, 1901, and for the payment for coal purchased by the Elk Hill Coal & Iron Company since July 1, 1901.

Dated New York, April 14, 1903.

CLARENCE J. SHEARN,
Attorney for Petitioner and Complainant,
140 Nassau Street, New York City.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Clarence J. Shearn, being duly sworn, deposes and says: That he is the attorney for the petitioner and complainant herein and is the same person who has signed the foregoing application for the issuance of subœnaes duces tecum.

Deponent verily believes that all of the books, papers, and documents mentioned in the foregoing application for subœnaes duces tecum will be of service in the determination of the case.

Deponent further avers that although the Philadelphia Coal & Iron Company, Lehigh & Wilkesbarre Coal Company, Lehigh Valley Coal Company, Hillside Coal & Iron Company, Pennsylvania Coal Company, and Elk Hill Coal & Iron Company, all of which are corporations engaged in the business of mining anthracite coal, are not parties to this case, each of said corporations is owned and controlled by a party to this case, except the Philadelphia Coal & Iron Company, which, as deponent is informed and believes, is owned by the Reading Company, the owner of all the capital stock of the Philadelphia & Reading Railway Company, one of the parties to this case; the Lehigh & Wilkesbarre Coal Company being owned by the Central Railroad Company of New Jersey; the Lehigh Valley Coal Company by the Lehigh Valley Railroad Company; the Hillside Coal & Iron Company and the Pennsylvania Coal Company by the Erie Railroad Company, and the Elk Hill Coal & Iron Company by the New York, Ontario & Western Railway Company. That the sources of deponent's information and the grounds of his belief as to the foregoing statements on information and belief are the annual reports of each of said railroad companies.

41 Deponent further avers, on information and belief, that all of the books, papers, and documents mentioned are in the possession of the witnesses named who are asked to produce them, or under their control, respectively; the sources of the deponent's knowledge and the grounds of his belief being that said officers named are those customarily entrusted with the possession and control of such books and documents.

Deponent further avers, upon information and belief, that all of the said books, documents, and papers desired contain material evidence necessary to the petitioner and complainant; that the contracts called for are ostensibly contracts for the purchase of anthracite coal from mine owners or operators upon a basis of a percentage, stated therein, of the price realized on the sale of coal at tidewater and other points of distance, but that said contracts are in reality, as will appear when they are construed in the light of the evidence to be adduced, contracts fixing the rate of transportation of anthracite coal from the mines to its destination, said rates appearing therefrom to be entirely different from the published tariffs of any of said railroad companies. They constitute, therefore, important links in the chain of evidence by which the petitioner expects to prove unlawful discrimination of rates on the part of the respondent railroad companies. Said books of accounts of said various companies will show the actual amounts received by said respective railroad companies for the transportation of anthracite coal during the period complained of, and will show, as deponent is informed and believes, that each of said railroad companies has received in many instances sums much smaller than its published tariff for the transportation of anthracite coal, thus tending to establish not only discriminations in rates complained of, but also the ability of said railroad companies to transport anthracite coal at a rate much lower than their existing published tariff rates. That the sources of deponent's knowledge and the grounds of his belief as to truth of the foregoing allegations, upon information and belief, are inspection of duly authenticated copies of the contracts in question and reports made to deponent by trustworthy persons, of interviews with coal operators, sales agents of some of said railroad companies, and also reports filed with this Commission, and the annual reports of said railroad companies.

CLARENCE J. SHEARN.

Sworn to before me this 15th day of April, 1903.

MARTIN S. DECKER,
Notary Public.

EXHIBIT L.

Before the Interstate Commerce Commission.

WILLIAM RANDOLPH HEARST, PETITIONER and complainant,
against
PHILADELPHIA AND READING RAILWAY COMPANY et al., respondents.

To the Interstate Commerce Commission:

Application is hereby made for the issuance of subpœnas duces tecum returnable April 24, 1903, upon the hearing set in the above-entitled matter, as follows:

E. B. Sturges,
J. S. McAnulty,
M. S. Kemerer,
Joseph J. Jermyn,

to produce all contracts for the sale of anthracite coal entered into since January 1, 1901, between each of said persons and the Lehigh Valley

Railroad Company, Lehigh Valley Coal Company, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, Scranton Coal Company, Hillside Coal and Iron Company, Central Railroad Company of New Jersey, Lehigh and Wilkesbarre Coal Company, New York, Ontario & Western Railway Company, Elk Hill Coal and Iron
42 Company, Pennsylvania Coal Company, or either of them, or between any firm of which any of said persons is a member and any of said companies, or between any corporation which any of said persons control by ownership of stock or otherwise and any of the aforesaid companies; also all reports made to each of said persons or to any firm of which any one of them is a member, or to any corporation engaged in the business of mining anthracite coal which any of said persons controls by ownership of stock or otherwise made by any of the aforesaid companies, of sales of anthracite coal and prices realized therefor at tidewater during the months of April, May, June, July, 1901, April, May, June, July, 1902, January and February, 1903.

S. I. Graeb: To produce on April 22, 1903, all circulars stating prices for the sale of anthracite coal at tidewater issued by Philadelphia & Reading Coal and Iron Company, Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Coal Company, Lehigh and Wilkesbarre Coal Company, Hillside Coal and Iron Company, Scranton Coal Company, Elk Hill Coal and Iron Company, or any of them, from March 1, 1901, to the date hereof.

E. C. Hebbard, secretary of the Guaranty Trust Company of New York: To produce on April 22, 1903, all contracts entered into in January, February, March, or April, 1899, between the Guaranty Trust Company of New York and Clarence D. Simpson and T. H. Watkins, and between said company and the Temple Iron Company, Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company, New York, Susquehanna & Western Railroad Company, Philadelphia & Reading Railway Company, or any or all of them, and all other contracts in the possession of the Guaranty Trust Company of New York relative to the security or enforcement of agreements executed by said railway companies and the Guaranty Trust Company of New York for the guarantee by said railway companies of the bonds of the Temple Iron Company.

Dated New York, April 17, 1903.

CLARENCE J. SHEARN,
Attorney for Complainant,
140 Nassau Street, New York City.

COUNTY OF NEW YORK, *ss:*

Clarence J. Shearn, being duly sworn, deposes and says: That he is the attorney for the complainant and is the same person who has signed the foregoing application. That he verily believes that all of the papers and documents mentioned in the foregoing application will be of service in the determination of this cause and are material and necessary for the proper prosecution thereof. That the contracts for the sale of coal called for are, or should be, the same as the contracts for the purchase of coal as to which subpœnaes duces tecum against the railroad companies has already been allowed by the Commission.

Deponent has been informed by his agent, F. M. Brown, and verily believes it to be true, that during the periods mentioned in the said application said railroad companies have made monthly reports to the vendors of coal to them, or their subsidiary companies, stating the price realized therefor at tidewater, which information is of obvious importance in determining this case and to save much time that otherwise would be spent in examining books.

That deponent is informed that said Graeb is the editor of a coal-trade journal known as the Black Diamond and is in possession of numerous circulars issued by said railway companies, or some of them.

That the Guaranty Trust Company of New York is trustee, under an agreement with the Temple Iron Company and the railroads mentioned in the said application for subpœna directed to the secretary of the trust company, whereby said railroad companies have joined together in a common guaranty of the stock and bonds of the Temple Iron Company. Deponent has seen duly authenticated copies of said contracts. That said contracts are material and necessary in that they furnish evidence of the combination or pool alleged in the petition.

CLARENCE J. SHEARN.

Sworn to before me this 17th day of April, 1903.

EDWARD A. FRESHMAN,
Notary Public, New York County.

43

Certificate.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D.C., May 26, 1903.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, ten in number, and marked A, B, C, D, E, F, G, H, K, L, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 26th day of May, 1890.

[SEAL.]

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

44 (Indorsed): Circuit court of the United States, southern district of New York. In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses and the production of books, papers, and documents. Petition and order. Henry L. Burnett, United States district attorney, southern district of New York. Clarence J. Shearn, counsel for complainant. U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

45 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

WILLIAM RANDOLPH HEARST, PETITIONER and complainant, *against* PHILADELPHIA & READING RAILWAY CO., et al., defendants.

STATE OF NEW YORK, *County of New York, ss:*

Frank W. Brown, being duly sworn, says: I reside in the borough of Manhattan, city of New York, and am over the age of twenty-one years. At the times and places hereinafter set forth I personally served the annexed order and a copy of the annexed petition on each of the following-named persons, to wit: George F. Baer, David G. Baird, Eben B. Thomas, G. O. Waterman, Fred F. Chambers, Orlando C. Post, William H. Truesdale, and G. A. Richardson, by delivering to and leaving with each of said persons a true copy of said order and petition, and at the same time exhibiting to each of them the annexed order and the signature of Hon. E. Henry Lacombe, thereto affixed.

Said services were made at the following times and places.

June 4, 1903, on George E. Baer, at Philadelphia, Pa.

June 6, 1903, on David G. Baird, at Philadelphia, Pa.

46 June 3, 1903, on Eben B. Thomas, at New York City, N. Y.

June 3, 1903, on G. O. Waterman, at New York City, N. Y.

June 3, 1903, on Fred F. Chambers, at New York City, N. Y.

June 3, 1903, on Orlando C. Post, at New York City, N. Y.

June 8, 1903, on William H. Truesdale, at New York City, N. Y.

June 8, 1903, on G. A. Richardson, at New York City, N. Y.

FRANK W. BROWN.

Sworn to before me this 11th day of June, 1903.

[NOTARIAL SEAL.] MACDONALD DEWITT, *Notary Public, Kings Co., Cert. filed in N. Y. Co.*

47 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

WILLIAM RANDOLPH HEARST, PETITIONER and complainant, *against* PHILADELPHIA & READING RAILWAY CO., et al., defendants.

STATE OF NEW YORK, *County of New York, ss:*

MacDonald DeWitt, being duly sworn, says: I reside in the borough of Brooklyn, city of New York, and am over the age of 21 years. On

June 8, 1903, in the borough of Manhattan, New York City, I personally served the annexed order and a copy of the annexed petition on E. C. Hebbard, by delivering to and leaving with said E. C. Hebbard a true copy of said order and petition and at the same time exhibiting to him the annexed order and the signature of Hon. E. Henry Lacombe, thereto affixed.

MACDONALD DEWITT.

Sworn to before me this 11th day of June, 1903.

[NOTARIAL SEAL.] EDWARD G. FRESHMAN,
Notary Public, New York County.

48 In the circuit court of the United States, southern district of New York.

IN THE MATTER
OF
THE PETITION OF THE INTERSTATE COMMERCE COMMISSION for an order, or orders, requiring the attendance of witnesses and the production of books, papers, and documents.

The separate answer of George F. Baer, president of the Temple Iron Company, in his own behalf and on behalf of the corporation of which he is an officer.

George F. Baer, answering the petition of the Interstate Commerce Commission herein, represents and shows:

I.

That he is the president of the Temple Iron Company, a corporation of Pennsylvania, organized and existing under an act of assembly of the said State entitled "An act to provide for the incorporation of iron and steel manufacturing companies," approved the 21st day of March, 1873, a copy of which, together with the amendments thereof and supplements thereto is filed herewith and made part hereof.

49 II.

This respondent admits the creation and existence of the petitioner as alleged, and also the exhibition to them of the petition and complaint of William Randolph Hearst against the various railroad companies in the said petition mentioned. He admits the allegations of the petition in respect of the hearing of the said last-mentioned petition and complaint within the southern district of New York.

III.

This respondent further admits that pursuant to a general subpœna of the Commission he appeared before them to testify as a witness on the part of the petitioner and complainant, and that at the session of April 29, 1903, the proceedings took place set forth in the petition herein, wherein this respondent as an officer of the Temple Iron Company on

the advice of counsel declined to produce or to direct the production of certain agreements called for by complainant's counsel dated February 27, 1899, between the Temple Iron Company, Guaranty Trust Company of New York, and Reading Company; between the same companies and the Lehigh Valley Railroad Company; between the same companies and the Central Railroad Company of New Jersey; between the same companies and the Delaware, Lackawanna and Western Railroad Company; between the same companies and the Erie Railroad Company, and between the same companies and the New York, Susquehanna and Western Railroad Company; and that this respondent then and there waived all questions as to the service of the writ of subpœna duces tecum, as to the said papers not being then in his actual custody and all other technical questions of the same nature; and on behalf of the Temple Iron Company, of which he is president, he admits that at the session of April 23, 1903, counsel for the complainant called upon the secre-
50 tary of the Guaranty Trust Company of New York to produce the originals of said papers as set forth in the complaint herein, and that, on the objections then stated to the Commission by the counsel for the various respondents, as well as the personal counsel of the Guaranty Trust Company, the said Edgar C. Hebbard, secretary of the said Guaranty Trust Company of New York, refused to produce the said agreements and other papers, notwithstanding the order of the Commission so to do, as set forth and alleged in the petition herein.

This respondent, on behalf of the Temple Iron Company, of which he is president, now here produces and files for the information of this court copies of all the said agreements, and thereupon in his own behalf, on behalf of the Temple Iron Company, whose officer he is and whose papers they are, as well as on behalf of the Guaranty Trust Company of New York, the confidential custodian of the same, objects to and protests against the production of the said documents before the said Commission at the said hearing, for the reason that they appear on their face to be only and solely papers and documents of private parties, not parties to the proceedings before the Commission; that they relate solely to the purchase of property within the State of Pennsylvania, and to the securing the payment of the purchase money therefor; that both on their face and by the testimony before the Commission they are affirmatively shown not to bear upon or relate to commerce between States, nor any other subject within the cognizance of said Commission, nor to bear upon or relate to the relation of his company as a shipper of interstate traffic with any of the respective carriers in the proceeding pending before the said Commission; that the said contracts, and the performance thereof, are wholly matters of local cognizance and are without the jurisdiction of the Interstate Commerce Commission and the act to regulate commerce, and are wholly without the jurisdiction of the Congress of the United States, and, therefore, may not be lawfully inquired into
51 by the said Commission. In support of which said allegations this respondent refers to and makes part of his answer herein a copy of the stenographer's notes of his testimony, a copy whereof is attached to and made part of the answer of William G. Brown, secretary of The Philadelphia and Reading Coal and Iron Company, filed herein as an exhibit. And this respondent further shows that it is the general

result of all the testimony so far adduced before the said Commission that the said contracts are of the character, purport, operation, and effect in this paragraph set forth and not otherwise.

IV.

This respondent, for himself and his said company, further shows that the said corporation is not a shipper of coal or any other commodity over any of the lines of the respective companies; that he and his subordinate officials and agents are ready and willing to appear before the Commission and to answer any question within their knowledge which the Commission may determine to be material bearing upon or relating to the relations of the said company as a shipper of interstate traffic with any of the respondent carriers in the proceeding pending before the Commission and to produce any books, contracts, or other papers bearing upon or relating thereto, but this respondent respectfully objects to and protests against any order herein which may be construed by the Commission to require him or any subordinate officer or any agent of his company or the said Guaranty Trust Company of New York, the confidential depository of said papers, to appear and testify concerning the private dealings of his said company either in the purchase of mines or stocks and interests therein, located within the Commonwealth of Pennsylvania, or any of the private dealings of his said company as a merchant either in respect of its mining, purchase, or sale of mines and stocks or of any commodity, for that the said several subjects are neither within the cognizance of the said Commission nor of the Congress of the United States.

52 This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers upon the Commission power to require by subpœna or otherwise the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents not directly and solely relating to matters of commerce between the States to be inquired into pursuant to the provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States, and in derogation of the right of this respondent, and of the corporation of which he is an officer, and of which the said Guaranty Trust Company is the depository, to have their private books and private affairs protected from unreasonable search or seizure. And in case it shall be held that the said act confers authority on said Commission to call for documents or testimony which shall prove or be held to prove the commission of acts which would subject any of the parties to any of the penalties imposed by and under the act to regulate commerce, then the said act is unconstitutional and void, as being in direct violation of the provisions of the fifth amendment to the Constitution of the United States and in derogation of the right of all of the said parties to be protected from the production of evidence to sustain a penal forfeiture.

And further, that the assumption of such power and authority on the part of the Congress of the United States is in violation of the tenth amendment to the Constitution providing that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

And thereupon this respondent prays to be dismissed hence, and
53 that the pending rule herein as against him, and as against the Guaranty Trust Company of New York, and the secretary thereof, may be discharged.

Respectfully submitted.

GEO. F. BAER.

CHAS. HERBNER,
J. D. CAMPBELL,
JOHN G. JOHNSON,
Counsel.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Geo. F. Baer, being duly sworn according to law, says on oath that he is the respondent named in the foregoing answer; that he has read the same and knows the contents thereof, and that the facts therein stated are true.

GEO. F. BAER.

Sworn to and subscribed before me this 8th day of June, 1903.

[SEAL.] C. K. KLINK,
Notary Public.

My commission expires April 18, 1907.

(Endorsed:) U. S. circuit court, southern dist. of New York. Filed July 1, 1903. John A. Shields, clerk.

54 Charter, acts of assembly, and by-laws.

TEMPLE IRON COMPANY.

55 CHARTER.

Temple Iron Company, incorporated March 22, 1873.

The Temple Iron Company was incorporated under the provisions of an act of assembly of the State of Pennsylvania, entitled "An act to provide for the incorporation of iron and steel manufacturing companies," approved 21st March, 1873 (P. L. 1873, page 28), which reads as follows:

SECTION 1. Be it enacted, &c., That when any three or more persons may desire to form a company, under the provisions of this act, for the purpose of making iron or steel, or of manufacturing iron or steel in any shape or form, either of these metals exclusively, or in combination with other metals or with wood, and shall have subscribed as capital stock for that purpose a sum not less than twenty thousand dollars, and actually paid in to such person or persons as they may have appointed to receive the same ten per centum of the capital stock so subscribed, it shall and may be lawful for them to prepare a certificate, in writing, in which shall be stated the corporate name of said company and the amount

Purposes.

Organization.

of the capital stock thereof, the number and value of the shares into which said stock has been divided, the amount of stock subscribed, the amount actually paid in and to whom paid, the names and residence of the subscribers and the number of shares subscribed by each, the name of the county in which the chief operations of the company are
56 to be carried on, and the names of the president and directors who shall manage the affairs of said company until the next election, which shall be signed and verified by the affidavit of the president and directors therein named.

Filing of certificate.

SECTION 2. That the said certificate shall be filed in the office of the secretary of the Commonwealth, who shall enter thereon the date of the filing of the same, and submit it to the attorney-general of the Commonwealth for examination; and if the attorney-general shall find the certificate to be properly drawn, signed and acknowledged, according to the provisions of this act, then the secretary of the Commonwealth shall cause a true copy thereof to be recorded at length in a suitable book to be kept in his office for that purpose, and the

Letters patent to issue.

governor shall issue letters patent under the great seal of the Commonwealth, declaring the subscribers to the stock of said company, and those who may thereafter become subscribers or holders of the said stock, to be a body politic and corporate, in fact and in law, by the name, style, and title stated in the certificate as aforesaid.

General corporate powers.

SECTION 3. That every such company shall have power to make and use a common or corporate seal, and to change, alter or amend the same at pleasure, and by their corporate name shall be competent in law to sue and be sued in any court of this Commonwealth; and they shall have power to

By-laws.

make and establish such rules, regulations and by-laws, not inconsistent with the constitution and laws of this Commonwealth, as they may deem necessary or convenient for the government of the corporation and for conducting or managing their business, providing for the election or appointment of a treasurer and secretary, and such other officers and agents as the business of the company may require.

Amount of capital stock.

57 SECTION 4. That the capital stock of every such company shall consist of not less than twenty thousand dollars [1] nor more than one million dollars, and shall

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[1] Increased to $30,000,000 by act 10th June, 1893 (P. L. 1893, page 417), viz:

That any corporation created by special or general laws shall, notwithstanding any limitation upon the amount of its capital stock by such special or general law, have authority, with the consent of the persons holding the larger amount in value of it, stock, to increase its capital stock to accomplish, enlarge the objects and purposes of its incorporation to the amount of thirty million dollars in the aggregate; such increase may be made at once or from time to time, as the stockholders aforesaid shall determine.

be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid in such instalments, and at such times as the directors may require; and if default be made in any payment, the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with the penalty of one per centum per month as aforesaid; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any instalment or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe.

Amended. See note. Subscriptions. Shares in arrear. Transfer of shares.

The amount of the capital stock may be increased or
58 diminished at any general election or special meeting of the stockholders, by a vote of two-thirds of all the shares of the stock held by such company: Provided, Every such increase or diminution shall be certified by the president and secretary, within thirty days, to the secretary of the commonwealth and to the auditor-general.

How stock may be increased.

SECTION 5. That the business of every such company shall be managed by the president and board of directors, who shall be selected annually by stockholders from among their number, at such time and in such manner as the by-laws may prescribe, and shall continue in office until their successors are duly chosen: Provided, The board of directors shall not consist of less than three members, including the president, and a majority of the board shall be citizens of
59 this Commonwealth. [2] All elections by the stockholders shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy.

President and directors. Amended. See note. Elections.

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[2] Act 29th April, 1874 (P. L. 1874, page 100, clause 7 of sect. 38): A majority of the stock of any such corporation may be held by persons who are not citizens of this State or of the United States. A majority of its directors may be citizens of another State or of any foreign country; and it may have an office at any place without the State, at which the by-laws of the corporation may authorize the same meetings of stockholders and directors may be held and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this State is transacted, and an officer of the company there, upon whom service of process may be made; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this Commonwealth. Corporations for any of the purposes named in this section, heretofore created by any special or general law of this Commonwealth, on accepting the provisions of the constitution, shall be entitled to all the privileges and powers conferred by this act upon

Real estate. Amended. See note.

SECTION 6. That every such company shall have the right [3] to purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market or for their own use and consumption iron ore and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories, and such other improvements and erections as they may deem necessary, and to manufacture iron and steel, in all shapes and forms, either of these metals exclusively or in combination with other metals, or with wood, and to transport all of said articles, or any of them, to market, and to dispose of the same, and to do all such other acts and things as a successful and convenient prosecution of said business may require: Provided, They shall not at any one time have more than five thousand acres of land within this Commonwealth, including leased lands. [4]

Mining and manufacturing privileges.

Limitation as to acreage. Amended. See note.

May issue and sell bonds.

SECTION 7. That every such company may make and issue bonds, with or without coupons attached, bearing interest not exceeding eight per centum per annum, and sell, exchange, or otherwise dispose of the same upon such terms and conditions as they may deem advisable; and such bonds and the interest thereon may be secured by mortgage or mortgages upon the corporate franchises, real and leasehold estate: Provided, They shall not issue bonds for a greater sum than three times the amount of the capital stock paid in.

Bonus on stock.

SECTION 8. That every company incorporated under the provisions of this act, shall pay into the treasury of the Commonwealth a bonus [5] of one-quarter of one per centum

Amended. See note.

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[3] As amended by the act 29th April, 1874 (P. L., 1874, page 99, clause 1 of sect. 38):

To purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore, and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories, and such other improvements and erections as they may deem necessary, and to mannfacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require.

[4] Amended by act 29th April, 1874 (P. L., 1874, page 99, clause 1 of sect. 38):

They shall not at any one time have more than ten thousand acres of land within this Commonwealth, including leased lands.

[5] Amended by act 15th June, 1897 (P. L., 1897, page 156):

Shall pay to the State treasurer, for the use of the Commonwealth, a bonus of one-third of one per centum upon the amount of the capital stock which said company is authorized to have, and a like bonus on any subsequent authorized increase thereof.

upon the original amount of the capital stock, and upon any increase thereof, in five equal annual instalments, and such taxes as are or may be required by law; and the stockholders shall only be individually liable for debts due to the laborers for services, and in that case for no period exceeding six months. Liability of stockholders.

61 SECTION 9. That the president and directors of every such company shall annually lay before the stockholders a full and complete statement of the business and affairs of the company for the preceding year; and it shall also be their duty to make report to the auditor-general annually, at such time and in such form as he may prescribe, of the operations of the company for the preceding year, to the end that he may ascertain the amount of tax due by said company to the Commonwealth; and such report shall be verified by the oaths or affirmations of president and treasurer of such company; and any such company which shall neglect or refuse for sixty days after notice given to report to the auditor-general, as aforesaid, shall be liable to a penalty of five hundred dollars for the use of the Commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable. Annual statement. Report to auditor-general. Failure to report.

SECTION 10. That whenever any persons forming a company under the provisions of this act shall state in a certificate required by the first section of said act, that they are willing that the stockholders shall be individually liable for all debts of the company as fully as if they were members of a partnership, then, and in that event, the stockholders of such company, whether holding the certificates of stock in their own name, or being the parties beneficially interested therein, shall be jointly and severally liable, in their individual capacities and estates, for all debts, contracts, or other liabilities of the company, contracted or incurred during the time such stockholders, respectively, own their stock or are beneficially interested therein: Provided, That all companies incorporated under this act, upon the condition aforesaid, and whose stockholders shall thereby assume such individual liabilities as aforesaid, shall be subject to only one-half the taxation now or hereafter imposed by the laws of this Commonwealth upon such incorporated companies. [6] Corporators may consent to individual liability of stockholders. Such companies subject to half taxation only.

62 See note.

SECTION 11. That it shall and may be lawful for any corporation organized under this act to appropriate any stream or streams, spring or springs, flowing through or along or rising upon any lands belonging to and owned by such corporation, in the vicinity of their works, for the purpose of supplying the same with steam or water power, upon the said corporation filing in the office of the prothonotary of May appropriate streams.

NOTE.—[6] This section is not applicable to Temple Iron Company. At its organization it did not elect to be individually liable for debts.

the court of common pleas of the county in which such works may be located, a draft or drafts, showing the stream or streams, spring or springs, which may have been appropriated for the purposes aforesaid, whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs, thus appropriated, so as to diminish the usual accustomed and natural flow thereof: Provided, That every corporation thus appropriating any stream or streams, spring or springs, shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the waters of such stream or streams, or spring or springs, have theretofore been accustomed to flow off or along the lands of such corporation.

Waters to be returned to channel.

Effect of incorporation.

SECTION 12. The incorporation of any association of persons under the provisions of this act shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature; and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act affect any franchise obtained under the provisions of the same.

63

Other corporations may subscribe to stock or purchase bonds.

SECTION 13. That it shall and may be lawful for any incorporated company of this Commonwealth to subscribe and take shares of stock in any company incorporated under the provisions of this act, or to purchase the bonds or stock, or guarantee the payment of said bonds and the interest thereon, or either principal or interest. [7]

Amended. See note.

Repeal.

64

SECTION 14. That all laws and parts of laws inconsistent with this act be and the same are hereby repealed, so far as they may relate to or affect any company incorporated under the provisions of this act, or the stock-

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[7] Amended by act 17th June, 1887 (P. L., 1887, page 412): That it shall and may be lawful for any incorporated company of this Commonwealth, or elsewhere, to subscribe for and take shares of stock in any company incorporated for the purposes named in said section thirty-eight of the said "corporation act of one thousand eight hundred and seventy-four," or to purchase the bonds or stock of such company or guarantee the payment of said bonds and the interest thereon, or either principal or interest; and it shall and may be lawful for any manufacturing company of this Commonwealth incorporated for the purposes named in said section thirty-eight of the said corporation act of one thousand eight hundred and seventy-four to subscribe for, purchase, hold, and dispose of bonds or stocks in any incorporated company of this Commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: Provided, That this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier.

holders of any such company: Provided, This shall not apply to laws imposing taxes upon such corporations.

Approved, the 21st day of March, A. D. 1873.

RAILROADS MAY TAKE STOCK AND BONDS AND GUARANTEE BONDS OF TEMPLE IRON COMPANY.

AN ACT to authorize railroad and canal companies to aid in the development of the coal, iron, lumber, and other material interests of this Commonwealth.

SECTION 1. Be it enacted, &c., That it shall and may be lawful for railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber, and other material interests of this Commonwealth, by the purchase of their capital stock and bonds, or either of them, or by the guarantee of or agreement to purchase the principal and interest or either of such bonds: Provided, That this act shall not apply to the stock and bonds of any corporation possessing mining or manufacturing privileges in the county of Schuylkill.

Approved, 15th April, 1869.—P. L., 1869, page 31.

65 The Temple Iron Company accepted the provisions of the new constitution and thereby obtained the benefit of all the additional legislation referred to above. It increased its capital stock to $2,500,000, and obtained new letters patent entitling it to all of the privileges, immunities, franchises, and powers conferred by the act of 29th April, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," and its supplements.

EXTRACT FROM CHARTER OF READING COMPANY.

(Act 7th April, 1870.—P. L., 1870, page 1025.)

SECTION 3. The company hereby created shall also have the power to make purchases and sales of or investments in the bonds and securities of other companies, and to make advances of money and of credit to other companies, and to aid in like manner contractors and manufacturers, and to receive and hold, on deposit or as collateral, or otherwise, any estate or property, real or personal, including the notes, obligations, and accounts of individuals and companies, and the same to purchase, collect, adjust, and settle, and also to pledge, sell, and dispose thereof, on such terms as may be agreed on between them and the parties contracting with them; and also to endorse and guarantee the payment of the bonds and the performance of the obligations of other corporations, firms, and individuals, and to assume, become responsible for, execute, and carry out any contracts, leases, or subleases made by any company to or with any other company or companies, individuals, or firms whatsoever.

66 EXTRACT FROM GENERAL CORPORATION LAW OF NEW YORK.

Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold, and dispose of the stocks, bonds, and other evidences of indebtedness of any

corporation, domestic or foreign, and issue in exchange therefor its stock, bonds, or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law.—§ 40, Art. III, chap. 688—May 18, 1892.

67

BY-LAWS.

ARTICLE I.—*Stockholders' meetings.*

1. The annual meeting of the stockholders, and for the election of nine directors—one of whom shall be chosen president and another vice-president—shall be held at the office of the company in the city of Reading on the third Saturday in March of each and every year, between the hours of one and three o'clock p. m., and the stockholder shall designate on his ballot which of said directors shall be president, and which vice-president.

2. At all meetings of the stockholders, a majority in interest shall constitute a quorum.

3. The secretary shall give ten days' notice to the stockholders of the time and place of stockholders' meetings. Mailing a notice addressed to a stockholder, at his last known residence, ten days before the meeting shall be equivalent to personal notice.

4. The president, vice-president, or a majority of the directors shall have power at any time to call a stockholders' meeting.

ARTICLE II.—*Board of directors.*

1. Meetings of the board of directors may be held at the office of the company in Reading, or at its office in the city of New York, or elsewhere, as may be from time to time designated by the board of directors.

68 2. The board of directors shall hold stated, special, or adjourned meetings at such times and places as they may deem most convenient. A majority shall form a quorum for the transaction of business. A smaller number may, however, adjourn to such time and place as they may deem expedient.

3. The secretary shall give to each director at least one day's notice by mail or telegraph or telephone of a board meeting. But the board may convene at any time without previous notice, all the members being present or consenting to such meeting.

4. The board of directors shall have power from time to time to delegate such authority as they may deem necessary to any one or more members of the board acting as committees.

5. The board of directors shall appoint a treasurer, and a secretary, and such other officers, including additional vice-presidents, and agents, as the business of the company may require. Unless otherwise expressly provided, all such officers shall hold office during the pleasure of the board of directors.

6. The board of directors shall have all the powers and authority granted by law to the company, except in such matters as may be specially excepted by the by-laws, and they shall have power to devise and to

carry into execution any agreements and contracts which they may consider calculated to promote the interests of the company.

7. In case of a vacancy in the office of president, or vice-president, or of any director by reason of death, resignation, or any other cause, the directors shall choose a successor to fill the vacancy until the next annual election.

ARTICLE III.

These by-laws may be repealed or amended at any annual or special meeting of the stockholders.

69 Agreement made and entered into as of the tenth day of April, 1899, between the Guaranty Trust Company of New York, of the first part, and the Reading Company, of the second part:

Whereas under the terms of an agreement dated the twenty-seventh day of February, A. D. 1899, between the Temple Iron Company, Guaranty Trust Company of New York, and the Reading Company, the Reading Company, at the request of the Temple Iron Company has, inter alia agreed to guarantee and has absolutely and unconditionally guaranteed, the due, punctual, and regular payment of 29.96 per cent of the principal and interest of an issue of $3,500,000 bonds of the Temple Iron Company, and of 29.96 per cent of such additional amounts of like bonds as may from time to time be issued with its consent, to be expressed by a resolution of its board of directors (the aggregate of all bonds not to exceed $15,000,000), all of which said bonds are to be secured by a mortgage and collateral trust agreement in which the said Guaranty Trust Company of New York is to be the trustee.

And whereas the Temple Iron Company has obtained agreements and guarantees substantially similar in character (but varying as to percentages) from other corporations, and may obtain other agreements and guarantees substantially similar in character (but varying as to percentages) from still other corporations, each corporation which has executed or shall at any time hereafter execute any such agreement being hereinafter called "guarantor;" and it is to the interest of the parties hereto that suitable provisions be made to enable the said Guaranty Trust Company of New York (hereinafter called the "Trust Company") to take such action as may be necessary to enforce the terms of guarantee and the other covenants of said agreement of twenty-seventh of Feb-
70 ruary, 1899, so as to work out equitable results and protect and safeguard the rights and obligations of the Reading Company and the several guarantors in the event of the failure of the Reading Company or any one or more of the guarantors to comply with the terms of any such guarantee, and to keep and perform the covenants in any such agreement.

Therefore this agreement witnesseth that the parties hereto do covenant and agree with each other (each covenanting for itself, its successors and assigns) in manner following, to wit:

First. That if the Reading Company shall neglect or refuse to pay any sum of money which by the terms of the agreement of twenty-seventh of February, A. D. 1899, it is liable to pay, for a period of ten days after demand for such payment has been made by the Trust Company, the Trust Company shall forthwith proceed at law or in equity, as

its counsel may determine, to collect and recover from the Reading Company any sum or sums which under the terms of its agreement of February 27, A. D. 1899, the Reading Company is liable to pay. That no suit or proceeding in law or equity, or judgment, or decree therein, shall be a bar to future suits to recover breaches of said agreement subsequently occurring; but, when and as often as the Reading Company shall make default, the Trust Company shall have a right to sue, and no payment, decree, judgment, execution, or sale shall in any way discharge the Reading Company from future liability arising under the terms of said agreement of February 27, A. D. 1899, hereinbefore referred to.

Second. If the Reading Company shall omit, neglect, or refuse, (a) for a period of three months after demand made by the Trust Company, to observe and keep its covenants in said agreement contained to receive and pay for 29.96 per cent of the present capital stock of the Iron Company—to wit, $2,500,000—and of all additional amounts hereafter issued with the express assent of the Reading Company, as in said agreement of February 27, 1899, particularly specified, or (b) for a period
71 of three months, after demand made by the Trust Company, to pay any other sum of money which by the terms of said agreement it is liable to pay, or to keep, observe, and perform any of its other covenants in the said agreement, then the Trust Company:

(1) If requested and directed by the holders of a majority in amount of beneficial certificates then outstanding, or

(2) If requested and directed by any other guarantor or guarantors, provided such other guarantor or guarantors agree with the Trust Company (in such several proportions as they shall fix among themselves) to assume all obligations of the Reading Company under such agreement of February 27, 1899, including the obligation to pay the entire price for the shares of the Temple Iron Company purchased by the Reading Company, as set forth in article first of said agreement at the time therein specified.

Shall and will sell shares of the Temple Iron Company equal in amount to the shares which the Reading Company had contracted to buy (to wit, 29.96 per cent of the present capital stock of the Iron Company, amounting to $2,500,000, and of all additional amounts thereof hereafter issued with the express assent of the Reading Company evidenced by the resolution of its board of directors and outstanding); and the Trust Company shall, if directed by such other guarantor or guarantors (it or they assuming all the obligations of the Reading Company under its said agreement of February 27, 1899, as aforesaid), buy such stock at such sale, at such price as may be indicated in such directions, but not exceeding the par value thereof, with interest at the rate of six per cent per annum on such par value from the date of the last dividend on such shares.

If such sale be not pursuant to request and direction of any
72 one or more guarantor or guarantors, as aforesaid, then the said shares shall be sold to the highest and the best bidder; provided, however, that the trustee may in its discretion fix an upset price thereon.

If the said shares are purchased by or for any one other than a guarantor, the proceeds arising therefrom, after deducting the charges and expenses of said sale, shall be appropriated by the Trust Company as a partial payment of all certificates of beneficial interest then outstanding.

If at said sale the said shares shall not have realized an amount equivalent to that to be paid by the Reading Company under its agreement of twenty-seventh February, 1899, to purchase the shares, which purchase price shall then become due and payable by the Reading Company to the Trust Company, then the Trust Company shall at once take such steps as may be necessary to recover the difference between the amount realized on said shares and the amount due by the Reading Company; and the amount so received by the Trust Company shall be appropriated by the Trust Company as a partial payment of all certificates of beneficial interest then outstanding.

If such sale be pursuant to the request and direction of any one or more guarantor or guarantors, as aforesaid, and the Trust Company, by direction of any one or more guarantor or guarantors, shall purchase the shares so sold, the same shall be held and be subject to the terms of the said agreement of twenty-seventh February, 1899; and the guarantor or guarantors which directed the Trust Company to purchase the same shall, in such several proportions as they shall have agreed among themselves in respect to said shares, and up to the full extent of the obligation of the Reading Company in respect of all such shares and in other respects, take the place in said agreement of the Reading Company, and shall make any and all payments of monies in respect of which the Reading Company shall then be in default under said agreement of February 27, 1899, and shall be entitled to all the rights and
73 privileges and subject to all the liabilities and restrictions pertaining to said shares and otherwise in said agreement expressed.

It is understood, however, that, in so taking the place of the Reading Company, the liability of any guarantor to pay a sum equal to twelve and one-half cents (12½c.) per ton upon and in respect to all and every ton of coal from the mines of the Temple Iron Company, as in said agreement provided, shall apply only to coal from the mines of the Temple Iron Company going over some line owned, controlled, or operated by said guarantor as the initial line, and not to coal transported over any line owned, controlled, or operated by the Reading Company as the initial line.

If the said shares are purchased by the Trust Company for and in behalf of a guarantor or guarantors pursuant to the request and subject to the conditions, rights, privileges, and liabilities hereinbefore provided in reference to such purchase, then the proceeds, after deducting the charges and expenses of said sale, shall be applied as a partial payment of all certificates of beneficial interest then outstanding, and shall be credited on account of the obligations of the guarantor or guarantors assumed in purchasing the shares and taking the place of the Reading Company. It is understood, however, that the guarantor or guarantors purchasing said shares shall have the option to pay only so much of the price bid as will be necessary to pay the charges and expenses of said sale, and the balance of the purchase money need not be paid unless under the terms of the first covenant of the said agreement, made the 27th of February, 1899, the amount which the Reading Company therein agreed to pay for said shares shall then be due and payable.

If the said shares shall be purchased by the Trust Company for any one or more of the guarantor or guarantors at a sum less than that due by the Reading Company under its agreement of 27th February, 1899

to purchase the shares (which purchase price shall then become
74 due and payable by the Reading Company to the Trust Company), then the Trust Company shall at once take such steps as may be necessary to recover the difference between the amount realized on said shares and the amount due by the Reading Company; and the sums so recovered by the Trust Company shall be distributed pro rata among all holders of beneficial interest, and be credited on account of the obligations only of the guarantor or guarantors taking the place of the Reading Company in the relative proportion of all such obligations so assumed, which shall be reduced in the aggregate to the extent of such recovery, but no liability of any other guarantor shall be reduced thereby.

No guarantor in default under its agreement shall be entitled to direct the Trust Company hereunder or to participate in any purchase hereunder; and any guarantor participating in any purchase shall, in respect of the shares purchased, execute an agreement substantially like these presents in respect of its participation in the shares so purchased, and also any and all other instruments to give full effect to its undertakings hereunder as the Trust Company may reasonably require from time to time.

Any sale of shares hereunder shall be in one parcel, unless all the guarantors not in default instruct the Trust Company in writing to make such sale in more parcels, in which event the Trust Company shall proceed in conformity with such instructions.

Third. If at any time the Reading Company deems it expedient or advisable to advance funds to the Trust Company to prevent the foreclosure of the mortgage of the Temple Iron Company by reason of default of any guarantor, the said Trust Company shall, out of any sums of money recovered from such defaulting guarantor, repay to the Reading Company the sums so advanced; and if other guarantors have made like advances to the Trust Company for similar purposes, then the
75 sums recovered by the Trust Company from such defaulting guarantors shall be applied ratably to the repayment of all sums remaining due on all such advances existing and unpaid at the time of such recovery.

Fourth. The Trust Company shall not sanction any issue of bonds in excess of the present $3,500,000, nor any issue of capital stock in excess of the present $2,500,000, except with the consent of all the guarantors not then in default, to be evidenced by a resolution of their several boards of directors.

Fifth. If the Reading Company shall neglect, omit, or refuse to pay the Trust Company a sum equal to 12½ cents upon and in respect of every ton of coal from the mines of the Temple Iron Company (acquired under the terms of the agreement between Simpson and Watkins and the Iron Company, dated the 27th day of February, 1899, and any additional mines hereafter acquired by the Iron Company in conformity with the agreement of the same date between said Iron Company, the Trust Company, and the Reading Company) transported over the lines of the Reading Company as the initial line, or any other sum it is liable to pay under the agreement of February 27, A. D. 1899, after the same has been demanded by the Trust Company, then, in addition to the remedies provided in this agreement, the Trust Company may notify and require

the Temple Iron Company thereafter to ship its coal over the lines of such of the guarantors as have not made default, any contract or agreement between the Reading Company and any companies owned or controlled by the Temple Iron Company to the contrary notwithstanding. Such shipment over lines not in default may be permanent or so long as such default continues, as the Trust Company shall from time to time determine.

Sixth. The remedies provided in this agreement are cumulative, and are in additional to all other remedies at law or in equity.

76 Seventh. This agreement shall bind the parties hereto, their successors and assigns.

In witness whereof, the parties hereto severally and respectively have caused their corporate seals to be hereunto affixed, and these presents to be signed by their proper officers, the day and year first above written.

GUARANTY TRUST COMPANY OF NEW YORK,
By W. G. OAKMAN, *President.*

Attest:

H. A. MURRAY, *Secretary.*

READING COMPANY,
By J. S. HARRIS, *President.*

Attest:

W. G. BROWN, *Secretary.*

77 THE TEMPLE IRON COMPANY.

Agreements of February 27, 1899, viz:

Simpson & Watkins and Temple Iron Company (vendors and iron company).

Simpson & Watkins and Guaranty Trust Company of New York (vendors and trustee).

Temple Iron Company, Guaranty Trust Company of New York, and Lehigh Valley Railroad Company; Central Railroad Company of New Jersey; Delaware, Lackawanna and Western Railroad Co.; Erie Railroad Company; New York, Susquehanna and Western Railroad Co. (railway agreement).

Temple Iron Company, Guaranty Trust Company of New York, and Reading Company (Reading agreement).

Guaranty Trust Company of New York, and Syndicate (syndicate agreement).

78 THE TEMPLE IRON COMPANY.

Agreements of February 27, 1899, viz:

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Temple Iron Company, Guaranty Trust Company of New York, and Lehigh Valley Railroad Company; Central Railroad Company of New Jersey; Delaware, Lackawanna and Western Railroad Co.; Erie Railroad Company; New York, Susquehanna and Western Railroad Co. (railway agreement).

Temple Iron Company, Guaranty Trust Company of New York, and Reading Company (Reading agreement).
Guaranty Trust Company of New York, and Syndicate (syndicate agreement).

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The Temple Iron Company.

Simpson & Watkins agreement.

This agreement, made this twenty-seventh day of February, in the year one thousand eight hundred and ninety-nine, by and between Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pennsylvania (hereinafter called the vendors), parties of the first part, and

The Temple Iron Company, a corporation existing under the laws of the State of Pennsylvania, and having its principal office at Reading, Pennsylvania (hereinafter called the company), party of the second part,

Witnesseth:

That in consideration of the mutual promises hereinafter contained and the benefits expected to be derived therefrom the parties hereto have covenanted and agreed, and by these presents do covenant and agree, as follows:

FIRST.

I. By these presents the vendors assign, set over, and transfer to The Temple Iron Company all of the capital stock, assets, and property, free of all debts, liens, and liabilities of every kind (except as hereinafter stated), of the following corporations:

(a) The Forty Fort Coal Company.
(b) The Mount Lookout Coal Company.
(c) The Wyoming Land Company.
(d) The Wyoming Electric Light Company.
(e) The Babylon Coal Company.
(f) The Sterrick Creek Coal Company.
(g) The Edgerton Coal Company.
(h) The Hendrick Land Company.
(i) The Northwest Coal Company.
(j) The shares of the Lackawanna Coal Company, a limited copartnership of the State of Pennsylvania.

81 II. The sale and transfer of the above stocks, assets, and property are made as of the first day of January, 1899. All cash, bills receivable, or accounts representing coal or merchandise, or property of any kind, sold since the first of January are transferred to the company. Cash and bills receivable representing transactions prior to January 1, 1899, belong to and are retained by the vendors, in consideration whereof the vendors shall and will pay and discharge all debts, liens, and liabilities of every kind, other than current liabilities incurred in due course since January 1, 1899, for pay rolls and supplies, and also except the bonded indebtedness mentioned in Schedule A, annexed hereto, of each and all of said companies, or charged in any way on their assets or property.

III. All of the said bonds enumerated in the said Schedule A shall and will be paid and be canceled by the vendors. If for any reason, at the time of the consummation of this agreement, the payment of such bonds shall be impracticable, the vendors shall pay to, and shall deposit with, a trustee then to be agreed upon by the parties, or, in the event of their failure to agree, to be selected by the company, a sum of money equal to the aggregate amount of all of said bonds then outstanding, at par, with accrued interest, and such sum shall be held and applied by the said trustee until such scheduled bonds shall have been paid and canceled by the vendors: Provided, That in its discretion, from time to time, at the request of the parties of the first part, the trustee may appropriate the whole or any part of such cash deposited to the purchase or the payment of said scheduled bonds at par.

IV. So far as concerns the shares of the Lackawanna Coal Company, the obligation of the vendors is subject to this condition:

The vendors now own and control only one-fifth of the capital
82 stock of the Lackawanna Coal Company, Limited, and do not bind themselves now to transfer or deliver to the company any more than said one-fifth; but they shall use their best efforts in good faith to acquire and to transfer and deliver to the company all of the capital shares of the Lackawanna Coal Company, Limited. For the purpose of fixing the proportionate price of these shares, the value of all of the shares of the Lackawanna Coal Company, Limited, is fixed at four hundred thousand dollars ($400,000), and such purchase price of four hundred thousand dollars ($400,000) shall be the basis on which shall be determined the proportionate value of the shares transferred to the company in consideration of the securities to be issued therefor.

The company shall not be obliged to take any part of the capital shares of the said Lackawanna Coal Company after February 18, 1899.

In the event of the failure or inability of the vendors to acquire and to transfer all of the capital shares of the Lackawanna Coal Company, Limited, there shall be deducted, on the basis aforesaid, such portion of stock or of bonds, or of both, deliverable hereunder, as shall be determined by the parties hereto, or, in case of their inability to agree, by the Guaranty Trust Company of New York.

V. Upon the execution and delivery of the securities to be issued by the company as hereinafter provided, the vendors also will deliver and pay to the company the sum of four hundred and ninety-eight thousand three hundred and ninety-six $\frac{66}{100}$ dollars ($498,396.66).

83 SECOND.

VI. In consideration and upon completion of the transfers and payments hereinabove provided, the company will issue and deliver to the vendors, or upon their order, proper certificates for two million two hundred and sixty thousand dollars ($2,260,000) of the full-paid capital stock of the company, and the bonds of the company for the aggregate principal sum of three million five hundred thousand dollars ($3,500,000), bearing interest at the rate of four per cent. per annum, payable semi-annually, at the office or agency of the company in the city of New York, and the principal payable on the first day of January, 1925, both principal and interest being payable in gold coin of the United States of the

present standard of weight and fineness, and without deduction for any tax which the company may be required to pay or to retain therefrom. The mortgage or collateral trust deed securing such bonds shall provide for a possible issue of such bonds for an aggregate principal sum not exceeding $15,000,000 (the remaining $11,500,000 bonds to be reserved for the acquisition of new property), and shall contain a proper provision for a sinking fund and for the acquisition of said bonds by lot for the purposes of such sinking fund at not over 110% and accrued interest. The terms of such bonds and of the indenture securing the same shall be determined by the parties hereto, or, in case of their inability to agree, by the Guaranty Trust Company of New York.

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THIRD.

All the covenants and stipulations in this agreement shall be binding as well upon the executors, administrators, successors, and assigns of the parties hereto.

In witness whereof, the parties hereto have caused these presents to be duly executed and delivered at Scranton, Pennsylvania, the day and year first above written.

CLARENCE D. SIMPSON. [L. S.]

In presence of—
P. A. NOLAN.

THOMAS H. WATKINS. [L. S.]
THE TEMPLE IRON COMPANY,
[L. S.] By GEO. F. BAER, *President.*
Attest:
T. O. YARINGTON, Jr., *Secretary.*

SCHEDULE A.

Company.	Bonds.
The Forty Fort Coal Company	$300,000
The Babylon Coal Company	45,000
The Wyoming Land Company	28,000
The Mount Lookout Coal Company	80,000
	$453,000

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THE TEMPLE IRON COMPANY.

Trustee's agreement.

An agreement, made this 27" day of February, in the year one thousand eight hundred and ninety-nine, between

Clarence D. Simpson and Thomas H. Watkins, compos' the firm of Simpson & Watkins, of Scranton, Pennsylvania (hereinafter called the vendors), parties of the first part, and

Guaranty Trust Company of New York, a corporation of the State of New York (hereinafter called the Trustee), party of the second part:

Whereas the vendors have entered into an agreement with The Temple Iron Company, a corporation of the State of Pennsylvania, of which

This agreement witnesseth:

That in consideration of the mutual promises hereinafter contained, and the expected benefits therefrom, the parties to these presents have covenanted and agreed, and by these presents do covenant and agree with each other in the manner following, to wit:

First. Simultaneously with their receipt from The Temple Iron Company of its capital stock and bonds, as provided in and by the said agreement, the vendors will transfer and will deliver to the trustee certificates for the said capital stock of The Temple Iron Company to the amount of two million two hundred and sixty thousand dollars ($2,260,000), and the bonds of the said company for the aggregate principal sum of
86 two million one hundred thousand dollars ($2,100,000), to have and to hold the same to the trustee and its successors and assigns forever, with full power of sale and disposition thereof.

Second. In consideration of such transfer, the trustee will pay and deliver to the vendors the sum of three million two hundred and thirty-eight thousand three hundred and ninety-six $\frac{66}{100}$ dollars ($3,238,396.66), and also will issue to them its certificates of beneficial interest (of the character hereinafter provided) in respect of $1,000,000 of such capital stock.

Third. At or about the time of such transfer the trustee will purchase from George F. Baer all of the other outstanding stock of The Temple Iron Company, being two hundred and forty thousand dollars ($240,000), and will pay therefor the round sum of one hundred and fifty-one thousand six hundred and three $\frac{34}{100}$ dollars ($151,603.34), such sum representing sixty cents on the dollar for all such stock, together with the expenses and the bonus upon the increase of the capital stock of the said company, all as previously agreed with Mr. Baer, the vendor of such outstanding stock. The trustee may issue and dispose of, without accountability to the vendors, like certificates of beneficial interest in respect of the stock so purchased.

Fourth. As one of the conditions of, and inducements to, the execution and performance of this agreement, and with a view to the enhancement of the real value of the stock embraced herein, it is expressly covenanted and agreed that all of the stock held, owned, or acquired by either of the parties hereto (with the exception of a sufficient number of shares to directors, judges, &c.) shall be delivered to and held by the trustee for the purpose of sale, and for any other purpose which may be specified in certificates of beneficial interest, which from time to time may be issued by the trustee to the parties, who, in pursuance of the provisions thereof, shall be entitled to receive the benefits of such
87 stock, provided, however, that every share of stock so deposited shall be entitled to equal advantage and benefit with every other share. Subject to this provision, the terms and purposes of such holding by the trustee shall be as determined by the parties hereto, or, in case of their failure to agree, by the decision of Charles H. Coster, and Francis Lynde Stetson, and Geo. F. Baer, or of any two of them.

Fifth. All the covenants and stipulations in this agreement shall be binding as well upon the executors, administrators, successors, and assigns of the parties hereto

Sixth. Upon the complete execution and performance of this agreement, and of the agreement hereunto annexed, the former agreement between the parties hereto, bearing date the nineteenth day of January, A. D. 1899, and all the provisions thereof, shall cease and determine.

In witness whereof the parties have caused these presents duly to be executed and delivered the day and year first above written.

CLARENCE D. SIMPSON. [SEAL.]
THOMAS H. WATKINS. [SEAL.]

In presence of

P. A. NOLAN.

GUARANTY TRUST COMPANY OF NEW YORK,
[L. S.] By W. G. OAKMAN, *President.*

Attest:

[SEAL.] H. A. MURRAY, *Secretary.*

88 THE TEMPLE IRON COMPANY.

Railway agreement.

An agreement, made this 27th day of February, in the year one thousand eight hundred and ninety-nine, by and between

The Temple Iron Company, a corporation existing under the laws of the State of Pennsylvania (hereinafter called The Iron Company), party of the first part, and Guaranty Trust Company of New York, a corporation existing under the laws of the State of New York (hereinafter called the Trustee), party of the second part; and a corporation existing under the laws of the State of (hereinafter called the Railway Company), party of the third part:

Whereas The Temple Iron Company is a corporation of the State of Pennsylvania, organized with all the powers of corporations for the manufacture of iron and steel under the laws of that State, and to develop the material interests of that State; and in the prosecution of its lawful purposes has issued, or is about to issue, its capital stock for the par value of $2,500,000, with the expectation of increasing such capital stock and the issues thereof to the aggregate sum of $5,000,000; and also has issued, and proposes to issue, its bonds, secured by mortgage or by collateral trust agreement, for the aggregate principal sum of $3,500,000, bearing interest at the rate of four per cent per annum, payable semi-annually at the office or agency of the company in the city of New York, and the principal payable on the first day of January, 1925, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness and without deduction for any tax which the company may be required to pay or to retain there-
89 from; the mortgage or collateral trust agreement securing such bonds being intended to contain a proper provision for a sinking fund and to provide for a possible issue of such bonds for an aggregate principal sum not exceeding $15,000,000 (of which $11,500,000 are to be reserved for the acquisition of other property), the form and terms of which bonds and of the indenture securing the same shall be satisfactory to and be determined by the Trustee, party hereto of the second part; and

Whereas in the accomplishment of its said purposes the Iron Company desires that the Railway Company shall extend its lawful aid by the purchase of capital stock and bonds of the Iron Company, or of either of them, or by guarantee of or by an agreement to purchase the principal and interest, or both or either, of bonds of the Iron Company; and

Whereas the Trustee, being owner of the greater part of the capital stock and of the bonds of the Iron Company, desires that the credit and resources of the Iron Company shall be strengthened and increased, and that the value of its shares of capital stock and bonds shall be increased by the means and in the manner hereinafter provided, and consequently is willing to make sale of the shares of the Iron Company to the extent, in the manner and at the times hereinafter specified; and

Whereas the Railway Company is engaged or interested in the business of transporting the materials for, or the products of, the Iron Company, or the iron or coal from its mines, and is directly interested in the development of the business of the Iron Company, so as to maintain a permanent supply of coal and so as to obtain and to secure a fair proportion of the traffic from and to the works and mines of the Iron Company; and

Whereas under the general laws of Pennsylvania, as well as by the particular laws under which it operates, the Railway Company has lawful authority for the purposes above indicated, to acquire and to hold the stocks and bonds of the Iron Company, and as a condition of such acquisition to guarantee the payment of the principal and interest of the bonds of the Iron Company: Now, therefore,

This agreement witnesseth:

That in consideration of the premises and of the mutual promises herein contained, and the expected performance thereof, the parties have mutually covenanted and agreed, and by these presents do mutually covenant and agree as follows, viz:

90 First. The railway company hereby purchases and on any day after January 1, 1904, if and when the trustee shall so request (in and by a written notice delivered to the railway company six months before such day), and in any event on the thirty-first day of December, 1906, the railway company as such purchaser thereof will receive, and the trustee will deliver, valid certificates of the full-paid capital stock of the iron company for an aggregate amount equal to per cent of the present capital stock of the iron company, amounting to $2,500,000, and of all additional amounts thereof hereafter issued with the express assent of the railway company evidenced by the resolution of its board of directors and outstanding; the price of each and every such share by the railway company hereby purchased and so to be received to be paid in cash at the time of their actual delivery, being one hundred dollars with interest at the rate of six per cent per annum thereon from the date of the last dividend on such shares.

Second. Pending such future delivery all such shares shall be held by the trustee with all the rights of owner thereof, both as to votes and dividends; provided, however, that if at any time the railway company shall make default in the faithful, punctual, and regular observance and performance of its obligations as hereinafter set forth, the trustee may sell, and may dispose of all such shares as the

to receive hereunder, and also the obligations of the railway company hereunder in respect thereof. In its discretion and in such form as it may determine, the trustee may make, issue, and sell certificates of beneficial interest in all said shares, subject to the rights and obligations of the railway company hereunder.

Third. In consideration of the premises, and of the right of the
91 railway company thus to become a shareholder in the iron company, and as part of the terms of purchase thereof, and also in consideration of the purchase by the trustee of the bonds of the iron company, the railway company more particularly covenants and promises as follows, viz:

1. Until the actual delivery to the railway company of the said shares the trustee shall have, and may and shall enjoy and exercise, the sole and exclusive right to vote upon such shares, and to receive for its own use the dividends in respect thereof. On the 10th day of December in each and every year up to the date of maturity of said bonds (i. e., up to and including the year 1924) in which the iron company shall declare no dividend or shall declare dividends amounting to an aggregate of less than six per cent for the preceding twelve months upon its entire capital stock issued with the consent of the railway company, then and in every such event and notwithstanding the actual delivery of all or any of such shares, the trustee shall be entitled, by recourse to the "stock reserve" designated in the next section 2, to make such provision as shall be necessary and sufficient to make up such aggregate of dividends to six per cent on all of such capital stock.

2. In case in any period of six months ending June 30th or December 31st, in any year, up to and including the year 1924, the earnings of the iron company shall not be sufficient (a) to set aside a sinking fund equal to 15 cents per ton on all coal mined from the mines of the iron company during such six months; (b) to pay interest on its bonds, and (c) to set aside a sum equal to three per cent on its stock (such sum being hereinafter called "stock reserve"); then any earnings of the iron company or such portion thereof as may be necessary shall be applied to the creation of such sinking fund. If such earnings shall be insufficient to create such sinking fund in full, then so far as they will go they shall be
92 applied to the creation of such sinking fund. If such earnings shall be more than sufficient to create such sinking fund in full, but not sufficient also to pay such interest and to provide such "stock reserve" in full, then and in every case of any such deficiency any surplus of such earnings (after providing for the sinking fund), so far as they will go and in the order indicated, shall be applied (a) to pay interest on the bonds of the iron company; and (b) to set aside such "stock reserve;" and in every such year (up to and including the year 1924), on or before June 10th or December 10th, as the case may be, the railway company will pay to the trustee a sum equal to 12½ cents upon and in respect of every ton of coal from the mines of the iron company acquired under the terms of the agreement between Simpson and Watkins and the iron company, dated the 27th day of February, 1899 (and any additional mines hereafter acquired by the iron company if the railway company, by resolution of its board of directors, shall hereafter elect and agree that this agreement shall be extended and applied to such additional acquisitions), during such six months transported over any line owned or con-

trolled or operated by the railway company as the initial line in such transportation or such part of such sum as may be necessary, to make up the deficiency in such interest and such "stock reserve," and if, notwithstanding such provision, there shall yet remain a deficiency in respect of such interest or such "stock reserve," then on said June 10 and said December 10, the railway company will pay to the trustee per cent of such deficiency in respect of such interest, and on said December 10 the railway company will pay to the trustee after exhausting the "stock reserve," per cent of the deficiency for the year in respect of the 6% dividend on the entire capital stock as last above provided in the preceding section 1, such percentage being the proportion
93 which the railway company is entitled to take of the capital stock of the iron company. No contribution to the "stock reserve" shall be used to pay dividends in or for any particular year which, in the aggregate, shall exceed six per cent on all the capital stock outstanding in such year.

If on or before any June 1st or any December 1st the trustee shall determine that on the 30th of June or the 31st of December next ensuing the iron company will not have on hand in cash available for the purposes hereof a sum equal to its earnings for the six months ending such June 30th or December 31st or such portion thereof as shall be necessary for the payment of the sinking fund and the payment of the semi-annual instalment of interest on its bonds and shall determine the shortage in this respect, then the railway company shall and will on June 10th and December 10th lend to the iron company, on the note of the iron company, payable ninety days thereafter (unless the trustee shall deem a shorter time sufficient) per cent of such shortage.

For purpose of all determinations of necessary payments on any June 10th and any December 10th, and of giving full effect to all the purposes of "1" and "2" hereof the trustee shall make all necessary estimates by June 1st, or by December 1st, as of the 30th of June, or of the 31st of December next ensuing, and payments pursuant to such estimates shall be made by such June 10th or such December 10th. Any necessary final adjustments (to be determined by trustee) shall be made by the first of February or of the first of August next ensuing.

For the purpose of enhancing the value of the bonds and the stock of the iron company, and also of reducing any possible burden of the railway company hereunder, the iron company intends to endeavor to induce other companies to make agreements and guaranties substantially similar in character to those herein set forth; and, if the trustee
94 shall make collections under this agreement and under such other agreements, or any of them, the trustee, by February 1st in each year, after suitable provision in full for all requirements of the previous year in respect of the sinking fund, the interest on all the bonded debt, and the dividends up to an aggregate of but not exceeding six per cent on all the stock of the Iron Company issued under the terms hereof, shall return to the railway company and to such other companies as have made such payments any surplus remaining from such payments of such previous year, ratably, according to the amount contributed by each.

3. The railway company hereby absolutely and unconditionally guarantees the due, punctual, and regular payment of the principal of and the interest upon % of the bonded indebtedness of the Iron

Company issued at any time with the consent of the railway company—applicable ratably to its entire bonded indebtedness so issued; and upon request of the trustee the railway company from time to time will execute and deliver to the trustee such other or additional instruments of guaranty (if any) as may be necessary or proper hereby to express and to effectuate such unconditional guaranty.

4. It is understood that the words "mines of the Iron Company," wherever used herein, shall be held to include any and all lands or collieries or coal mining property of any kind owned, leased, or in any way controlled (either by ownership of a majority of the capital stock or otherwise) by the Iron Company.

Fourth. Provision in form satisfactory to the trustee hereunder shall be made in the mortgage or collateral trust agreement securing said bonds of the iron company, whereby a sinking fund of fifteen cents per ton on all coal mined from the mines of the Iron Company shall be set aside, and whereby the trustee of said mortgage or trust agreement shall apply
95 the same in the redemption of such bonds, by lot, at a price to be fixed in said mortgage or trust agreement, but not exceeding 110% and accrued interest, and a suitable reference to this agreement of guaranty shall be printed or stamped upon such bonds.

Fifth. Except with the consent of the railway company, expressed by a resolution of its board of directors, the capital stock and bonds of the Iron Company at any time outstanding shall not exceed $2,500,000 and $3,500,000, respectively.

Sixth. This agreement shall run for the benefit, not only of the parties hereto, their successors and assigns, but also for the benefit of all and several the present and future holders of the stock or of the bonds of the Iron Company.

In witness whereof the several parties hereto severally and respectively have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers the day and year first above written.

THE TEMPLE IRON COMPANY,
[L. S.] By GEO. F. BAER, *President.*
Attest:
T. O. YARINGTON, Jr., *Secretary.*

GUARANTY TRUST COMPANY OF NEW YORK,
[L. S.] By G. W. OAKMAN, *President.*
Attest:
H. A. MURRAAY, *Secretary.*

96 Signed by railway companies as follows:
3 counterparts by Lehigh Valley Railroad Company (a corporation of Pennsylvania), by Alfred Waters, president, and attested by Jno. R. Fanshawe, secretary, for $22\frac{88}{100}$ per cent.
3 " by Central Railroad Company of New Jersey (a corporation of New Jersey), by J. R. Maxwell, president, and attested by Sam'l Knox, secretary, for $17\frac{12}{100}$ per cent.

3 counterparts by Delaware, Lack'wanna and Western Railroad Company (a corporation of Pennsylvania), by Sam. Sloan, president, and attested by Fred. F. Chambers, secretary, for $19\frac{52}{100}$ per cent.

3 " by Erie Railroad Company (a corporation of New York), by E. D. Thomas, president, and attested by J. A. Middleton, secretary, fo' $5\frac{84}{100}$ per cent.

3 " by New York, Susquehanna and Western Railroad Company (a corporation of New Jersey, Pennsylvania), by E. B. Thomas, president, and attested by J. A. Middleton, secretary, for $4\frac{68}{100}$ per cent.

MEMO.—See separate agreement as to Reading Company.

97 THE TEMPLE IRON COMPANY.

Reading agreement.

An agreement, made this twenty-seventh day of February, in the year one thousand eight hundred and ninety-nine, by and between

The Temple Iron Company, a corporation existing under the laws of the State of Pennsylvania (hereinafter called the Iron Company), party of the first part; and

Guaranty Trust Company of New York, a corporation existing under the laws of the State of New York (hereinafter called the trustee), party of the second part; and the Reading Company, a corporation existing under the laws of the State of Pennsylvania (hereinafter called the Reading Company), party of the third part:

Whereas the Temple Iron Company is a corporation of the State of Pennsylvania, organized with all the powers of corporations for the manufacture of iron and steel under the laws of that State and to develop the material interests of that State; and in the prosecution of its lawful purposes has issued, or is about to issue, its capital stock for the par value of $2,500,000, with the expectation of increasing such capital stock and the issues thereof to the aggregate sum of $5,000,000; and also has issued, and proposes to issue, its bonds, secured by mortgage or by collateral trust agreement for the aggregate principal sum of $3,500,000, bearing interest at the rate of four per cent per annum, payable semiannually at the office or agency of the company in the city of New York, and the principal payable on the first day of January, 1925, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness and without deduction for any tax which the company may be required to pay or to retain therefrom; the
98 mortgage or collateral trust agreement securing such bonds being intended to contain a proper provision for a sinking fund and to provide for a possible issue of such bonds for an aggregate principal sum not exceeding $15,000,000 (of which $11,500,000 are to be reserved for the acquisition of other property), the form and terms of which bonds and of the indenture securing the same shall be satisfactory to and be determined by the trustee, party hereto of the second part; and

Whereas in the accomplishment of its said purposes the Iron Company desires that the Reading Company shall extend its lawful aid by the purchase of capital stock and bonds of the Iron Company

them, or by guarantee of or by an agreement to purchase the principal and interest, or both or either, of bonds of the Iron Company; and

Whereas the trustee, being owner of the greater part of the capital stock and of the bonds of the Iron Company, desires that the credit and resources of the Iron Company shall be strengthened and increased, and that the value of its shares of capital stock and bonds shall be increased by the means and in the manner hereinafter provided, and consequently is willing to make sale of the shares of the Iron Company to the extent, in the manner, and at the times hereinafter specified; and

Whereas the Reading Company is engaged or interested in the business of transporting the materials for or the products of the Iron Company, or the iron or coal from its mines, and is directly interested in the development of the business of the Iron Company, so as to maintain a permanent supply of coal and so as to obtain and to secure a fair proportion of the traffic from and to the works and mines of the Iron Company; and

Whereas under the general laws of Pennsylvania, as well as by the particular laws under which it operates, the Reading Company has lawful authority for the purposes above indicated, to acquire and to hold the stocks and bonds of the Iron Company, and as a condition of such acquisition to guarantee the payment of the principal and interest of the bonds of the Iron Company: Now, therefore,

This agreement witnesseth:

That in consideration of the premises and of the mutual promises herein contained, and the expected performance thereof, the parties have mutually covenanted and agreed, and by these presents do mutually covenant and agree, as follows, viz:

99 First. The Reading Company hereby purchases, and on any day after January 1, 1904, if and when the trustee shall so request (in and by a written notice delivered to the Reading Company six months before such day), and in any event on the thirty-first day of December, 1906, the Reading Company, as such purchaser thereof, will receive, and the trustee will deliver, valid certificates of the full-paid capital stock of the Iron Company for an aggregate amount equal to 29.96 per cent of the present capital stock of the Iron Company, amounting to $2,500,000, and of all additional amounts thereof hereafter issued with the express assent of the Reading Company, evidenced by the resolution of its board of directors, and outstanding; the price for each and every such share by the Reading Company hereby purchased and so to be received to be paid in cash at the time of their actual delivery being one hundred dollars, with interest at the rate of six per cent per annum thereon from the date of the last dividend on such shares.

Second. Pending such future delivery, all such shares shall be held by the trustee with all the rights of owner thereof, both as to votes and dividends: Provided, however, That if at any time the Reading Company shall make default in the faithful, punctual, and regular observance and performance of its obligations as hereinafter set forth, the trustee may sell, and may dispose of, all such shares as the Reading Company may be entitled to receive hereunder, and also the obligations of the Reading Company hereunder in respect thereof. In its discretion, and in such form as it may determine, the trustee may make, issue, and sell

certificates of beneficial interest in all said shares, subject to the rights and obligations of the Reading Company hereunder.

Third. In consideration of the premises, and of the right of the Reading Company thus to become a shareholder in the Iron Company,
100 and as part of the terms of purchase thereof, and also in consideration of the purchase by the trustee of the bonds of the Iron Company, the Reading Company more particularly covenants and promises as follows, viz:

1. Until the actual delivery to the Reading Company of the said shares the trustee shall have, and may and shall enjoy and exercise, the sole and exclusive right to vote upon such shares, and to receive for its own use the dividends in respects thereof. On the 10th day of December in each and every year up to the date of maturity of said bonds (i. e., up to and including the year 1924) in which the Iron Company shall declare no dividend or shall declare dividends amounting to an aggregate of less than six per cent for the preceding twelve months upon its entire capital stock issued with the consent of the Reading Company, then and in every such event, and notwithstanding the actual delivery of all or any of such shares, the trustee shall be entitled, by recourse to the "stock reserve" designated in the next section 2, to make such provision as shall be necessary and sufficient to make up such aggregate of dividends to six per cent on all of such capital stock.

2. In case in any period of six months ending June 30th or December 31st, in any year, up to and including the year 1924, the earnings of the Iron Company shall not be sufficient (a) to set aside a sinking fund equal to 15 cents per ton on all coal mined from the mines of the Iron Company during such six months; (b) to pay interest on its bonds, and (c) to set aside a sum equal to three per cent on its stock (such sum being hereinafter called "stock reserve"); then any earnings of the Iron Company, or such portion thereof as may be necessary, shall be applied to the creation of such sinking fund. If such earnings shall be insufficient to create such sinking fund in full, then so far as they will go they shall be applied to the creation of such sinking fund. If such earnings shall be
101 more than sufficient to create such sinking fund in full, but not sufficient also to pay such interest and to provide such "stock reserve" in full, then and in every case of any such deficiency any surplus of such earnings (after providing for the sinking fund), so far as they will go and in the order indicated, shall be applied (a) to pay interest on the bonds of the Iron Company, and (b) to set aside such "stock reserve"; and in every such year (up to and including the year 1924), on or before June 10th or December 10th, as the case may be, the Reading Company will pay to the trustee a sum equal to 12½ cents upon and in respect of every ton of coal from the mines of the Iron Company acquired under the terms of the agreement between Simpson and Watkins and the Iron Company, dated the 27th day of February, 1899 (any additional mines hereafter acquired by the Iron Company, if the Reading Company, by resolution of its board of directors, shall hereafter elect and agree that this agreement shall be extended and applied to such additional acquisitions), during such six months transported over any line owned or controlled or operated by the Reading Company as the initial line in such transportation, or such part of such sum as may be necessary,

to make up the deficiency in such interest and such "stock reserve," and if, notwithstanding such provision, there shall yet remain a deficiency in respect of such interest or such "stock reserve," then on said June 10 and said December 10, the Reading Company will pay to the trustee 29.96 per cent. of such deficiency in respect of such interest, and on said December 10 the Reading Company will pay to the trustee after exhausting the "stock reserve" 29.96 per cent. of the deficiency for the year in respect of the 6% dividend on the entire capital stock as last above provided in the preceding section 1, such percentage being the proportion which the Reading Company is entitled to take of the capital
102 stock of the Iron Company. No contribution to the "stock reserve" shall be used to pay dividends in or for any particular year which, in the aggregate, shall exceed six per cent. on all the capital stock outstanding in such year.

If on or before any June 1st or any December 1st the trustee shall determine that on the 30th of June or the 31st of December next ensuing the Iron Company will not have on hand in cash available for the purposes hereof a sum equal to its earnings for the six months ending such June 30th or December 31st or such portion thereof as shall be necessary for the payment of the sinking fund and the payment of the semi-annual instalment of interest on its bonds and shall determine the shortage in this respect, then the Reading Company shall and will on June 10th and December 10th lend to the Iron Company, on the note of the Iron Company, payable ninety days thereafter (unless the trustee shall deem a shorter time sufficient) 29.96 per cent of such shortage.

For purpose of all determinations of necessary payments on any June 10th and any December 10th, and of giving full effect to all the purposes of "1" and "2" hereof, the trustee shall make all necessary estimates by June 1st, or by December 1st, as of the 30th of June, or of the 31st of December next ensuing, and payments pursuant to such estimates shall be made by such June 10th or such December 10th. Any necessary final adjustments (to be determined by trustee) shall be made by the first of February or of the first of August next ensuing.

For the purpose of enhancing the value of the bonds and the stock of the Iron Company, and also of reducing any possible burden of the Reading Company hereunder, the Iron Company intends to endeavor to induce other companies to make agreements and guaranties substantially similar in character to those herein set forth; and, if the trustee shall make
103 collections under this agreement and under such other agreements or any of them, the trustee, by February 1st in each year, after suitable provision in full for all requirements of the previous year in respect of the sinking fund, the interest on all the bonded debt, and the dividends up to an aggregate of, but not exceeding six per cent. on all the stock of the Iron Company issued under the terms hereof, shall return to the Reading Company and to such other companies as have made such payments any surplus remaining from such payments of such previous year, ratably, according to the amount contributed by each.

3. The Reading Company hereby absolutely and unconditionally guarantees the due, punctual, and regular payment of the principal of and the interest upon 29.96 % of the bonded indebtedness of the Iron Company issued at any time with the consent of the Reading Company—applicable ratably to its entire bonded indebtedness so issued; and upon request of

the trustee the Reading Company from time to time will execute and deliver to the trustee such other or additional instruments of guaranty (if any) as may be necessary or proper hereby to express and to effectuate such unconditional guaranty.

4. It is understood that the words "mines of the Iron Company," wherever used herein, shall be held to include any and all lands or collieries or coal-mining property of any kind owned, leased, or in any way controlled (either by ownership of a majority of the capital stock or otherwise) by the Iron Company.

Fourth. Provision in form satisfactory to the trustee hereunder shall be made in the mortgage or collateral trust agreement securing said bonds of the Iron Company, whereby a sinking fund of fifteen cents per ton on all coal mined from the mines of the Iron Company shall be set aside, and whereby the trustee of said mortgage or trust agreement shall apply the same in the redemption of such bonds, by lot, at a price to be
104 fixed in said mortgage or trust agreement, but not exceeding 110 % and accrued interest, and a suitable reference to this agreement of guaranty shall be printed upon such bonds.

Fifth. Except with the consent of the Reading Company, expressed by a resolution of its board of directors, the capital stock and bonds of the Iron Company at any time outstanding shall not exceed $2,500,000 and $3,500,000, respectively.

Sixth. This agreement shall run for the benefit nor only of the parties hereto, their successors and assigns, but also for the benefit of all and several the present and future holders of the stock or of the bonds of the Iron Company.

In witness whereof, the several parties hereto severally and respectively have caused their corporate seals to be hereunto affixed, and these presents to be signed by their proper officers the day and year first above written.

THE TEMPLE IRON COMPANY,
[L. S.] By GEO. F. BAER, *President.*

Attest:
T. O. YARRINGTON, JR., *Secretary.*

GUARANTY TRUST COMPANY OF NEW YORK,
[L. S.] By W. G. OAKMAN, *President.*

Attest:
H. A. MURRAY, *Secretary.*

READING COMPANY,
[L. S.] By J. S. HARRIS, *President.*

Attest:
W. G. BROWN, *Secretary.*

105 THE TEMPLE IRON CO.

Syndicate agreement.

An agreement, made this twenty-seventh day of February, in the year one thousand eight hundred and ninety-nine, by and between

Guaranty Trust Company of New York, a corporation existing under the laws of the State of New York (hereinafter called the trustee), party of the first part, and

The several subscribers (hereinafter called each a syndicate subscriber and collectively the syndicate), parties of the second part:

Whereas two certain contracts have been entered into by and between Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pennsylvania, one with the Temple Iron Company, a corporation of the State of Pennsylvania, and the other with the said Guaranty Trust Company of New York, of which agreements copies are hereunto annexed, and upon which this agreement is based: Now, therefore,

This agreement witnesseth:

First. Upon demand to be served severally as hereinafter provided, the syndicate will purchase from the trustee the first collateral trust or mortgage 4% gold sinking fund bonds of the Temple Iron Company for the aggregate principal sum of two million one hundred thousand dollars ($2,100,000), and will pay therefor the price of ninety cents on the dollar and accrued interest; and also will purchase from the trustee at par its certificates of beneficial interest for the aggregate principal sum of $1,500,000 in respect of certificates of the capital stock of said The
106 Temple Iron Company for a like amount held by or deposited with the trustee, it being understood that so many of such shares as may be necessary therefor may be withdrawn and be used to qualify directors and judges of elections. The terms of the certificates of such beneficial interest shall be such as shall be determined by Francis Lynde Stetson, George F. Baer, and C. H. Coster, or any two of them.

Second. The total obligation now assumed by the syndicate hereunder is three million three hundred and ninety thousand dollars ($3,390,000); and no syndicate subscriber assumes any obligation hereunder in excess of the sum stated in his subscription hereto, and no syndicate subscriber shall be responsible for the default or failure of any other syndicate subscriber.

It is, however, distinctly understood and agreed that as and when determined by the said Stetson, Baer, and Coster, or by any two of them, the capital stock of said The Temple Iron Company may be increased to an aggregate amount not exceeding five million dollars ($5,000,000), and may be issued (but in such manner only as shall result in the same being deposited with and held by the trustee upon conditions and against certificates of beneficial interest similar to those herein proposed) and its first collateral trust or mortgage deed may be made to secure a possible issue of bonds for an aggregate principal sum not exceeding fifteen million dollars ($15,000,000), of which eleven million five hundred thousand dollars ($11,500,000) shall be reserved and used only with the consent of the said Stetson, Baer, and Coster, or of any two of them, for the purpose of acquiring additional property.

Third. Any and all notices or demands hereunder to or upon any syndicate subscriber shall be sufficiently given or made if delivered or mailed to such subscriber at the address indicated in his subscription hereto.

107 In witness whereof, the parties have caused these presents duly to be executed and delivered the day and year first above written.

GUARANTY TRUST COMPANY OF NEW YORK,
[L. S.] By W. G. OAKMAN, *President.*
Attest:
[SEAL.] H. A. MURRAY, *Secretary*

J. P. Morgan & Co	$500,000
H. McK. Twombly	500,000
Wm. Rockefeller	500,000
Geo. F. Baker	500,000
Jas. Stillman	250,000
Drexel & Co	640,000
Guaranty Trust Co. of N. Y., by W. G. Oakman, Prest	500,000
	$3,390,000

108 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Answer of Eben B. Thomas.

To the honorable the judges of the said court:

Eben B. Thomas, for his separate answer to the petition of the Interstate Commerce Commission praying for an order requiring him to answer the questions referred to in said petition, says:

First. This respondent denies the averments of said petition that at the time he declined to answer said questions, the said Interstate Commerce Commission was engaged in an inquiry into the management of the business of the common carriers, defendants in said proceeding, in order that it might keep itself informed as to the manner and method in which said business was conducted, and might obtain from such common carriers full and complete information necessary to enable it to perform such duty.

He avers, on the contrary, that said Commission was engaged in the hearing of testimony on behalf of the complainant in a certain
109 proceeding pending before said Commission, instituted by William Randolph Hearst, and that the only matters under investigation were the particular allegations made by the said William Randolph Hearst in his petition as to certain alleged unlawful practices of the defendants therein.

Second. The questions propounded to him and which he declined to answer had no relation to any matter under investigation by said Commission, or which could have lawfully or properly been under investigation by it, and were therefore wholly irrelevant and immaterial to any issues raised or that could properly be considered in said proceeding, and hence this respondent was justified in refusing to answer them.

The issues in the cause before the Commission related, first, to the reasonableness of the freight rates on anthracite coal charged by the defendant carrying companies; second, to the question whether these companies had combined to pool freights and freight traffic, and, third, to the question whether the said carrying companies were charging certain shippers, viz, coal companies whose stocks they owned or controlled, lower rates of freight than they charged to other shippers. This respondent answered fully every question propounded to him having the remotest relevancy to such issues. The questions that he declined to answer related to none of these issues, but were directed wholly to the methods pursued in the sales of their products by certain companies not parties to the proceeding, not carrying, but mining companies. The questions, four in number, were as follows:

"Mr. SHEARN. Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business
110 of selling coal in accordance with those same ideas, so as to avoid what you regard as reckless competition?"

"Mr. SHEARN. Mr. Thomas, who fixes the price of the coal of the Lehigh Valley Coal Company that is sold at tide water?"

"Mr. SHEARN. Who fixed the price of the coal of the Hillside Coal & Iron Company, and the Pennsylvania Coal Company that was sold at tide water during your connection with those properties?"

"Mr. SHEARN. Are the prices of anthracite coal at tide water fixed by agreement between the presidents of these different coal companies?"

Third. The Lehigh Valley Coal Company, as to whose business this respondent was thus interrogated, is a corporation created by and existing under the laws of the Commonwealth of Pennsylvania. It was organized March 4th, 1875, by merger and consolidation of the Luzerne Coal & Iron Co., and the Green Land Co., corporations created by and existing under the laws of the Commonwealth of Pennsylvania, and has a capital stock of $1,000,000, and an outstanding bonded indebtedness of $19,970,000. It operates, as owner or lessee, twenty-six collieries.

Under and by virtue of the express authority conferred by the statutes of the Commonwealth of Pennsylvania, the Lehigh Valley Railroad Company acquired and holds all its stock, but such acquisition and holding imposes upon said Lehigh Valley Railroad Company no greater responsibilitiy for the acts of said Lehigh Valley Coal Company than is imposed upon or exists in the case of stockholders in corporations generally. Its business and operations are controlled and conducted
111 by its own officers, and the Lehigh Valley Railroad Company neither asserts nor exercises any control or supervision over the same, or direction thereof.

The said Lehigh Valley Coal Company by its charter is authorized to and has since its organization engaged in the business of mining, purchasing, and selling coal. Its business is wholly disassociated from that of transportation and its acts therefore can not be made the subject of investigation by the Interstate Commerce Commission, nor was it pretended nor asserted that in the said proceeding before the Commission that honorable body had under consideration or investigation the acts or proceedings of said coal company. What methods it chose to adopt or what plan it pursued in the matter of the sale of its coal had not, and

could not have the remotest relevancy to the questions before the Commission, whether the freight rates charged by the Lehigh Valley Railroad Company were, or were not, reasonable, whether that company in combination with other carrying companies was engaged in pooling freights or freight traffic, or whether it was making discriminating charges in favor of said coal company.

This respondent therefore submits to this honorable court that the questions which he declined to answer were not relevant or material to the issues before the Commission, and that in refusing to answer the same, he did not refuse to answer a material question, or one
112 touching the matters under investigation, and that the petition of said Interstate Commerce Commission should therefore, as to him, be dismissed.

And he will ever pray, &c.

E. B. THOMAS.

FRANCIS I. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Eben B. Thomas, being duly sworn according to law, deposes and says that the above answer by him subscribed, so far as stated of his own knowledge is true, and so far as stated upon information derived from others he believes it to be true.

E. B. THOMAS.

Sworn and subscribed before me this tenth day of June, 1903.

[SEAL.] MORRIS FORTNIER,
Notary Public, N. Y. Co.

(Endorsed:) U. S. circuit court, southern dist. of New York. Filed July 1, 1903. John A. Shields, clerk.

113 Circuit court of the United States of America, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

The answer of W. H. Truesdale, individually and as president of the Delaware, Lackawanna and Western Railroad Company.

Before the honorable judges of the circuit court of the United States for the southern district of New York:

W. H. Truesdale, answering the petition of the Interstate Commerce Commission, says:

I.

That he is the president of the Delaware, Lackawanna and Western Railroad Company, a corporation duly organized and existing under

the laws of the Commonwealth of Pennsylvania. That under
114 and by virtue of its charter and the laws of the said Commonwealth of Pennsylvania it is authorized, among other things, to own and operate railroads to transport persons and property; and to own and operate coal mines and property incident thereto, and to buy and sell coal; and to acquire and hold or guarantee stocks and bonds of other corporations.

II.

This respondent admits that on or about the 5th of November, 1902, William Randolph Hearst filed a petition and complaint before the Interstate Commerce Commission against the Delaware, Lackawanna and Western Railroad Company and other railroad companies. He also admits that an application on behalf of the complainant Hearst was made before the Interstate Commerce Commission for the issuance of subpœnas duces tecum, and that said subpœnas were served upon him individually and as president of the Delaware, Lackawanna and Western Railroad Company, requiring him to appear before the Interstate Commerce Commission and bring with him all contracts for the purchase of anthracite coal entered into at any time since the first day of January, 1901, between the Delaware, Lackawanna and Western Railroad Company, and any and all producers of anthracite coal or owners or operators of anthracite coal mines.

He alleges, however, that the application made by the complainant before the Interstate Commerce Commission for the issuance of such subpœnas duces tecum was ex parte and that no notice was given to him or to said corporation of said application, and that he had no opportunity to appear before said Interstate Commerce Commission and state his reasons why said subpœnas duces tecum should not be issued.

This respondent offers to produce for the inspection of the court
115 the contracts made by the Delaware, Lackawanna and Western Railroad Company with persons other than the complainant for the purchase of coal, but he objects to and protests against the production of said contracts before said Commission at said hearing, and he alleges:

First. The Delaware, Lackawanna and Western Railroad Company is a Pennsylvania corporation, and authorized by the laws of that Commonwealth, among other things, to buy and sell coal, has entered into five certain contracts with certain of the owners of coal mines along its line of railroad within the State of Pennsylvania for the purchase of certain of the coal from the owners thereof. None of the corporations or persons with whom this respondent railroad company had entered into contracts for the purchase of coal were parties to the hearing before this Commission. These third persons have rights in such contracts. They would have a right to object to the contracts being produced and made a part of a public record if they themselves were present before the Commission, and the fact that they are not parties before the Commission should not be taken advantage of by the Commission or by this court, and the private business of persons who are not before this Commission hould not be inquired into without their consent.

Second. The said contracts were made by and between citizens of the Commonwealth of Pennsylvania. They are wholly local and domestic

contracts, made and performable within the Commonwealth of Pennsylvania, and in nowise bear upon or relate to commerce between the States or with foreign nations. That said contracts and the performance thereof are wholly of local cognizance and are without the jurisdiction of the Interstate Commerce Commission under the act to regulate commerce, and are wholly without the jurisdiction of the Congress of the United States, and therefore may not lawfully be inquired into here.

116 Third. That said contracts are irrelevant, incompetent, and immaterial to the inquiry before the said Interstate Commerce Commission on the complaint of said William Randolph Hearst, as will more fully appear by the testimony of this respondent in the record before this court.

III.

This respondent also admits that he was directed by the Commission to answer the questions set forth in the petition, but that he declined to answer the questions on the advice of counsel, and for the reasons that all of said questions pertained to the buying and selling of coal by the Delaware, Lackawanna and Western Railroad Company, and were not material, relevant, or competent under the issues before the Commission, and that the questions were not within the cognizance of the Interstate Commerce Commission.

IV.

This respondent, individually and as president, states that he is ready and willing to appear before the said Commission and to answer any questions within his knowledge which the Commission may determine to be material, bearing upon or relating to the relations of said company as a carrier of interstate traffic within the lawful jurisdiction of the said Interstate Commerce Commission; but this respondent respectfully objects to the inquiry of the said Commission into the business of said company of mining and selling coal, as herein stated, for the reason that it is not within the cognizance of said Commission to make such inquiry.

V.

This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers upon the said Interstate Commerce Commission power to require by subpœna, or otherwise, the attendance and testimony of witnesses and the

117 production of books, papers, tariffs, contracts, agreements, and documents not directly and solely relating to matters under investigation, pursuant to the provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the Fourth Amendment to the Constitution of the United States and in derogation of the right of this respondent and of the corporation of which he is an officer to have its private books and private affairs pertaining to the buying and selling of coal protected from unreasonable search or seizure.

And, further, that the assumption of such power and authority on the part of the Congres of the United States is in violation of the tenth

amendment to the Constitution providing that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Wherefore your respondent prays to be dismissed hence, and that the pending rule herein to show cause may be discharged as against him.

Respectfully submitted.

W. H. TRUESDALE,
Respondent.

WALTER W. ROSS, *Counsel.*

STATE OF NEW YORK,
County of New York, ss:

William H. Truesdale, being duly sworn according to law, deposes and says that he is the respondent named in the foregoing answer; that he has read the same and knows the contents thereof, and that the facts therein stated are true.

W. H. TRUESDALE.

Sworn to before me this 10 day of June, 1903.

C. HOWARD,
Notary Public, N. Y. County.

(Endorsed:) U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

118 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Separate answer of E. B. Sturges, a witness.

Now comes the respondent, E. B. Sturges, and for answer to the petition of the Interstate Commerce Commission, without waiving objections thereto, but insisting that such petition is insufficient in matter and form, he alleges:

That he is a citizen of the United States and one of the people of the United States, and as such he is entitled to the protection of this honorable court in the full enjoyment of his rights in this proceeding
119 and in the proceeding before the Interstate Commerce Commission; that among the rights as a citizen which he claims are secured to him by the fourth, fifth, and tenth amendments to the Constitution of the United States, and which should be so protected, are the books, papers, liberty, and property of this respondent, which may not be taken from him without due process of law.

And further answering said complaint, this respondent alleges that the act of Congress creating the Interstate Commerce Commission and the amendments thereto do not vest any judicial powers in such Commission, or give it the right to require this respondent to produce his contracts and private papers, or answer questions concerning the same as to a lawful business, save only in a case where the same shall be directly or indirectly relevant and pertinent upon some issue of which such Commission has jurisdiction; that the complaint of William Randolph Hearst, and

the answers of the various railroad companies thereto, raise no issue of fact or law within the jurisdiction of the Interstate Commerce Commission to which the contracts of this respondent by which he agrees to sell coal to purchasers thereof for sixty-five per cent of its tide-water value at the breakers' mouth in the State of Pennsylvania are directly or indirectly relevant, material, or pertinent to the issues pending before said Commission upon the complaint; that the questions put to this respondent, and the direction that he produce contracts for the purchase or sale of coal at the breakers' mouth in the State of Pennsylvania, were not pertinent, material, or relevant, directly or indirectly, to any controversy pending before said Interstate Commerce Commission over which said Interstate Commerce Commission then and there had jurisdiction; that said contracts are for the sale of coal wholly produced, mined, and
120 sold within the State of Pennsylvania, and do not touch interstate commerce, and are not connected with any subject within the jurisdiction of the Interstate Commerce Commission.

And further answering the petition, this respondent respectfully denies that petitioner was exercising its authority or enforcing the provisions of the act to regulate commerce, or that it was material or relevant to the issues on trial that this respondent should have obeyed said Commission; but, on the contrary, this respondent alleges that said Commission was beyond its jurisdiction in making the requirement it did of this respondent, which this respondent respectfully declined to obey.

And further answering the petition, this respondent alleges that the proceedings before said Interstate Commerce Commission was conducted as if the same were a general investigation into all commerce, whether interstate commerce or not, and whether within the jurisdiction of said Commission or not, as if the purpose of such investigation was to ascertain the reasonable and just price for which coal should be sold at the breakers in Pennsylvania, or to the consumer in the city of New York, as will more fully appear by the examination of Mr. Edmonds, the sales agent of one of the coal companies, by Mr. Commissioner Prouty (pp. 737 to 741), to which special reference is hereby made as a part hereof; also by a reference to the examination of the same witness by Mr. Shearn (pp. 744, 745); also by reference to the objections made by counsel to this line of testimony, and the rulings of the Commission thereon (pp. 745 to 756); also by a reference to the testimony of Mr. Olyphant and rulings thereon (pp. 1340–1352); also by a reference to all such testimony before such Commission to which reference is hereby made in support hereof.

121 And this respondent further answering, refers to the answer of Samuel T. Peters herein as if a part hereof, so far as the same further answers the petition and so far as the same is applicable to this respondent.

Wherefore this respondent prays that the petition herein may be dismissed, and that he may be protected in his constitutional and statutory rights as a citizen of the United States.

E. B. STURGES,
By GEO. F. BROWNELL,
His Attorney.

(Endorsed:) U. S. circuit court, southern district of New York. Filed June 12, 1903. John A. Shields, clerk.

122 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Separate answer of Samuel T. Peters, a witness.

Now comes Samuel T. Peters, and for answer to the petition of the petitioner in the above-entitled matter, without waiving his objections to the sufficiency thereof, but, instead, insisting that the same is wholly insufficient in matter and form, does further state as an answer thereto, as respondent herein.

That your respondent, said Samuel T. Peters, is a citizen of the United States and one of the people of the United States, and as such that he is entitled to be protected by this honorable court in the
123 full enjoyment of his rights as such citizen in this proceeding and in the proceeding before the Interstate Commerce Commission, in that said Interstate Commerce Commission has no power or right to insist that this respondent answer the questions which this respondent declined to answer by advice of counsel.

And this respondent hereby claims that this court shall protect him from being ordered to answer the questions propounded to him by counsel before said Interstate Commerce Commission which this respondent declined to answer by advice of counsel, and that this court adjudge that this respondent is not legally bound to answer said questions which he declined to answer, because said questions are not pertinent, material, and relevant to any matter complained of by William Randolph Hearst before said Interstate Commerce Commission, and because said questions are not questions relevant, material, or pertinent to any matter over which said Interstate Commerce Commission has jurisdiction by virtue of the Constitution or statutes of the United States.

And this respondent further claims that as one of the people of the United States the Constitution of the United States reserves to him the right to decline to answer any question not pertinent, material, or relevant to the complaint of said William Randolph Hearst, or to matters over which said Interstate Commerce Commission has jurisdiction by virtue of the Constitution and statutes of the United States.

That in particular this respondent claims the benefit of the tenth amendment to the Constitution of the United States, which provides:

"The powers not delegated to the United States by the Consti-
124 tution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

That in particular this respondent claims the benefit of that part of the fifth amendment to the *Con*stitution of the United States which provides that this respondent shall not

"be deprived of life, liberty, or property without due process of law."

That in particular this respondent claims the benefit of the fourth amendment to the Constitution of the United States, which provides:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated."

And this respondent further claims that the only judicial power granted to the Government of the United States by the Constitution of the United States is the power granted such Government and the courts of the United States by Article III of the Constitution of the United States; that such judicial power is vested in the Supreme Court and this and other inferior courts, and that such judicial power only extends to "cases in law or equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority," and to other cases specified in Article III, section 2 thereof.

And this respondent further answers that said Interstate Commerce Commission is not the Supreme Court, or an inferior court ordained and established by Congress, as provided by the Constitution of the
125 United States; that said Interstate Commerce Commission is an administrative commission; that the sole power of Congress to create that part of such Interstate Commerce Commission is granted to it by Article I, section 8, of the Constitution of the United States which provides that Congress shall have power—

"To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

And this respondent further answers that Congress did not grant to said Interstate Commerce Commission the full power granted Congress permitting it to "regulate commerce" as aforesaid, but that the only power granted to said Commission by the act of Congress creating such Commission was the power to investigate as to excessive charges, as to "all charges made for any service rendered or to be rendered in the transportation of passengers or property" (where such service is not rendered "wholly within one State"), "or in connection therewith, or for the receiving, delivering, storage, or handling of such property" (section 1); also the power to investigate as to "unjust discrimination" by "special rate, rebate, drawback, or other device" by which one or more persons are given a preference over other persons or corporations to whom "a like and contemporaneous service" is rendered "under substantially similar circumstances and conditions" (sections 2 & 3); also the power to investigate as to "any contract, agreement, or combination . . . for the pooling of freights of different and competent railroads, or to divide between them the aggregate or net proceeds of the earnings of
126 such railroads, or any portion thereof;" also such incidental powers as were further specified to enable said Commission to make public the rates of interstate railroads, and to secure substantial equality of rates under like circumstances and conditions, and rates that should not be unjust and unreasonable to interstate shippers.

And this respondent further answers that said Interstate Commerce Commission may only investigate as to the matters aforesaid of its own motion, but that it may not so investigate generally upon the complaint of an aggrieved person, since said act creating said Interstate Commerce Commission further expressly provides:

"SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any

district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt."

And this respondent further answers that it appears by the complaint filed by said William Randolph Hearst before said Commission that said William Randolph Hearst did file his complaint under section 9 of the act creating said Interstate Commerce Commission last above
127 quoted, although it does not therefrom appear that he in fact had been "damaged" so as to entitle him to file such complaint, nor has said William Randolph Hearst offered any evidence to show that he has been so "damaged," directly or indirectly, in all of the many days given up to the hearing by said Interstate Commerce Commission.

And this respondent, further answering, alleges that the complaint of said William Randolph Hearst is confined to alleged violations of sections 1, 2, 3, and 5 of the act to regulate commerce, which creates said Interstate Commerce Commission, and to which reference has been hereinbefore made, and from which sections quotations have been hereinbefore made, but that said complaint does not demand a general investigation by said Commission of and concerning the business of buying and selling coal, nor has Congress given said Commission power to make a general investigation concerning the buying and selling of coal, or the prices at which coal is bought and sold.

And this respondent, further answering, alleges that, as appears by the answers filed by the several railroad companies made parties defendant to said proceeding before said Interstate Commerce Commission, said railroad companies in substance deny the allegations of the complaint of said William Randolph Hearst, and thereby issues were created, and thereby said Interstate Commerce Commission in taking testimony was limited to the issues so created; this being the true intent and meaning of said act to regulate commerce, as appears by section 9 with reference to such a complaint, section 15 thereof with reference to the report of said Commission, and as appears by section 16 thereof giving this court power to enforce any lawful order of said Interstate Commerce Commission, and making "the findings of fact in the report of said
128 Commission * * * prima facie evidence of the matters therein stated."

And this respondent, further answering, alleges that by the true construction of said act to regulate commerce said Interstate Commerce Commission, of its own motion, or upon informal complaints made to it, has the right to make an investigation of any matter lawfully committed to its jurisdiction, and to make public its report as the result of such investigation, but such report is not prima facie evidence against any person or corporation, and can not result in an order to be enforced by the courts against any person or corporation, since any other construction of the act would result in depriving the citizen of the United States affected thereby of his rights under the Constitution of the United States without due process of law, in that such citizen would not have a hearing before said Interstate Commerce Commission, or notice of the charges made against him before said Interstate Commerce Commission, or an opportunity to cross-examine witnesses before said Interstate Commerce Commission, or an opportunity to offer evidence in his own behalf before

said Commission, although the determination of said Commission might result in depriving such citizen of his liberty or property, contrary to the provisions of the Constitution of the United States in such case made and provided.

And this respondent, further answering, alleges that it is the true intent and meaning of said act to regulate commerce, which creates said Interstate Commerce Commission, that said Interstate Commerce Commission is confined to the charges laid before it by said William Randolph Hearst,
because by proceeding before said Commission he elects to sub-
129 stitute a proceeding before said Commission for his action at law for damages, and to take the findings of said Commission, if they be in his favor, as prima facie evidence, instead of a judgment of the courts, since said Hearst would, nevertheless, be entitled to enforce said findings, if lawfully made upon sufficient evidence, by a suit in the courts, if the parties defendant to his proceeding should not voluntarily yield to said Hearst such rights as the Interstate Commerce Commission should lawfully order yielded to him as the result of his complaint before it.

And this respondent, further answering, alleges that by "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, Congress did amend the act to regulate commerce, and acts amendatory thereof, and did make provision with reference to the power of this court to compel witnesses to produce books and papers, as follows:

"And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction." (Section 3.)

But this respondent alleges that he is not a carrier or shipper within the meaning of the words last above quoted, nor is he a party to the pro-
ceeding before said Interstate Commerce Commission, nor would
130 the answers to the questions propounded to this respondent which he declined to answer by the advice of counsel, directly or indirectly relate to the matter in controversy between said William Randolph Hearst and said railroad companies, in that the commissions paid to this respondent for the sale of coal are paid to him after said coal has been mined, carried to market by said railroad companies for the owners thereof, and sold to purchasers thereof by this respondent or other commission merchants or owners thereof, the prevailing market price being paid in such market therefor.

And this respondent further answering, alleges that said William Randolph Hearst and his counsel, being desirous of obtaining information for some purpose not within the jurisdiction of said Interstate Commerce Commission, caused this respondent and other witnesses to be subpœnaed as witnesses; that by propounding questions to this respondent and such other witnesses, which questions were outside the jurisdiction of said Commission and irrelevant to any issues lawfully before them, that information might be obtained extraneous to any issue lawfully before said Commission; that it clearly appeared before said Interstate Commerce

Commission, by the statements of counsel and the questions of counsel of said Hearst, that said proceeding was not brought before said Interstate Commerce Commission to redress any legal grievance of said William Randolph Hearst, or because said William Randolph Hearst had been damaged as to some matter of which the Interstate Commerce Commission had jurisdiction, as will more fully appear from all the testimony given and proceedings had before said Interstate Commerce Commission, and as particularly appears from the opening of the counsel of said Hearst to said Interstate Commerce Commission (pp. 20–21–26–27–32).

131 And further answering, this respondent alleges that counsel for said Hearst called a large number of witnesses to testify before the Interstate Commerce Commission, and that this respondent was the last of the witnesses so called to testify before that body; that before this respondent was called to testify before that body it had clearly appeared by the testimony of witnesses called and sworn in behalf of said William Randolph Hearst, that the rates charged for the transportation of coal were not unreasonable or unjust, but were just and reasonable; that the charges for the transportation of coal did not discriminate against the independent operators or merchants, but that all shippers of coal, whether directly or indirectly connected with railroads or not, paid the same price for shipping the same quality of coal; that it also appeared that there was no discrimination in behalf of railroads or coal companies directly or indirectly connected with them as against independent miners, shippers, or merchants of coal, from the testimony of independent miners or operators called and sworn on behalf of said Hearst.

And this respondent, further answering, alleges that many collateral charges and insinuations were orally made before the Interstate Commerce Commission by counsel for said Hearst, and, among others, the charge in substance that during the past winter the railroad companies, through coal companies owned or controlled by them, had been in some way responsible for the high prices which people were compelled to pay coal merchants for coal, but Mr. Sturges, his own witness, an independent operator, truthfully stated the fact in this regard as follows (p. 678):

"Mr. STURGIS. I have fought the railroad companies as much

132 as anybody, but you must permit me to say that I think the conduct of the large coal companies—and it is not their record part of the last ten years—the conduct of the large companies during this winter has been wonderfully magnanimous, in my judgment. They might have made millions on millions of dollars. Instead of doing that, which they had a right to do after the way they had been treated, instead of doing that, they kept the price down to five dollars a ton. It is something that is not done very often. That is my opinion, and they have treated me pretty tough sometimes."

And further answering, this respondent alleges, that over 1300 pages of testimony submitted to the Interstate Commerce Commission, and referred to as a part of the petition herein, clearly show that in the main the hearing before said body, lasting for many days, at different times, had been taken up with the attempt of the counsel of said William Randolph Hearst to investigate as to, and to regulate the price of coal at the breakers in Pennsylvania and upon retail sale in New York City, although the Commission has no jurisdiction over such matters.

And this respondent, further answering, alleges that the Interstate Commerce Commission, after having heard Mr. George F. Baer testify for two or more half days, recognized the fact that he, and the other witnesses who had testified before he testified, had said little or nothing really bearing upon the issues before it upon the complaint of said William Randolph Hearst, as appears from the minutes of the proceedings before said Commission (p. 990):

"Mr. SHEARN. That is all.

133 "Com'r PROUTY. Mr. Baer, cases of this sort concern a great many people other than the complainant and defendants. There has been very little said in your examination about the reasonableness of this rate on coal, and I will, sometime before the case is closed, want to ask you some questions as to that. I would as soon do it at some subsequent stage of this hearing as to-day.

"Mr. BAER. I would be glad if you would do that. I am very much pressed. As I said, there is a strike here in the harbor and I am very anxious to adjust it. I am very much pressed. I will be very glad to come at any time that will suit your convenience.

"The CHAIRMAN. In view of that statement it seems fair that Mr. Baer be excused until some other session of the Commission.

"Mr. SHEARN. Yes, sir.

"The CHAIRMAN. We will take a recess until 2 o'clock."

That since this proceeding was instituted Mr. Baer was further examined by the Commission as to rates for nearly half a day.

And respondent, further answering, alleges that the question whether the Commission was trying the issues before them, or investigating anything suggested for its investigation by counsel for Mr. Hearst has been frequently raised as appears from the minutes of its proceedings, and in particular the following:

"Mr. MOOT. I want to be clearly understood about this. I do not claim that that kind of evidence would not be the very best evidence in the world on many issues, but I claim that that sort of compilation

134 by anybody—I do not care whether it is the Supreme Court or the President of the United States, I do not care how authoritative the source—my claim is that that general gathering together of figures about what the gross earnings per mile of railroad in various parts of the country are has no bearing, no relevancy, no materiality, no competency on the issues here, which, sharply cut, are: First, is our rate unreasonable? And, secondly, does it discriminate? And if it does discriminate, this question of pooling is a mere incident to that question. Those questions are the only legitimate questions in this case, as I understand it, and I deem it very important that this record shall show clearly whether this Commission rules that this is evidence on those issues or whether it simply rules that it is a statement for information that may or may not be evidence, and that it does not receive it as evidence on these sharp-cut issues.

"Mr. SHEARN. We offer it as evidence on these sharp-cut issues and refer to the holdings of the Commission for years back that it is competent and relevant, beginning with the Coxe case and being followed consistently down.

"The CHAIRMAN. We will receive it" (pp. 122–123).

"The CHAIRMAN. We realize all those differentiating features, Mr. Moot. The evidence may be of very little significance, but the courts, as well as the Commission, seem to hold that a comparison is a legitimate method of investigating the reasonableness of a railroad charge.

135 "Mr. MOOT. My recollection was that Justice Brewer, in quite a late opinion, held that where statistics were as broad as those, they were utterly unreliable and could not be used.

"The CHAIRMAN. That may be. They may not warrant any finding of fact in a specific case.

"Mr. MOOT. Then it seems to me they should not be received.

"The CHAIRMAN. Well, perhaps not, but we are inclined to allow them" (pp. 125–126).

And this respondent, further answering, alleges that the question was often raised whether the Commission was trying the issues before it or investigating generally outside such issues, but the testimony or evidence was received as within the issues without any ruling as to whether such issues were those framed by *by* the pleadings before the Commission or were vague and indefinite and outside such pleadings and the statute creating such Commission, as will appear by a reference to the stenographer's minutes (pp. 360, 361, 364, 365, & 366).

Mr. BROWNELL. On behalf of the companies I represent, I wish to enter an objection to the reception of these contracts on the same grounds stated by Judge Campbell and Mr. Davies. It seems to me at this time we should reach some understanding of the issues that are being tried here. I had supposed from the allegations of the petition and from our understanding of the jurisdiction of the Commission in these matters that there were three questions under consideration—first, whether or not the rates charged for the transportation of anthracite coal are unreasonable; secondly, whether or not those rates as charged as shown by the

136 published rates are charged uniformly or whether there are other rates given as preferential rates and rates that discriminated in favor of other parties. It is also claimed in the petition that in violation of the 5th section of the interstate commerce act the respondent companies, by means of maintaining common freight rates and dividing the tonnage of anthracite coal to be transported over the lines of the defendants, the aggregate or net proceeds of the earnings of the defendants have been pooled and divided among the defendants in violation of the 5th section of the act to regulate commerce. These, I take it, are the only matters at issue here before the Commission." * * * (Pages 364, 365, 366.)

"Com'r CLEMENTS. If these contracts themselves show, or in relation to the testimony tend to show, that competition between these carriers of this coal was restrained or reduced, would you doubt the relevancy of that fact as pertinent to the question of reasonable rate?

"Mr. BROWNELL. I most certainly should. I do not think it has any bearing on any such question. I do not think that question is at issue.

"Com'r CLEMENTS. The question of the reasonableness of those rates is at issue.

"Mr. BROWNELL. The question is, it seems to me, whether or not the rates published by the respondent companies are reasonable or unreasonable.

"Com'r CLEMENTS. Is it important or not to know whether these rates are rates of competition or rates of combination, or made in restraint of trade?

137 "Mr. BROWNELL. There is no suggestion that the contract between The Temple Iron Company and the Trust Company and these railroad companies, guaranteeing their bonds, has had anything to do with the question of rates. In fact it has been shown that these rates have been in force a great many years. They have lowered during the past fifteen years. That has been shown already. It has not been questioned. There is no suggestion, where the rates have been lowered during the last fifteen years, where these railroads have carried from the same collieries of The Temple Iron Company that they carry from to-day—there is no suggestion that the rates are any lower than when extended to the former owner. It is not even contended that such a condition exists.

"Com'r CLEMENTS. I understand the contention of counsel to be that competition has been throttled. I do not know whether it was before these contracts, in pursuance of them, or because of them. I understood you to say that they had nothing to do with the reasonableness of these rates.

"Mr. BROWNELL. I think the contracts as they are or the contracts as they are represented to be have no bearing upon the question of the reasonableness or unreasonableness of these rates."

"The CHAIRMAN. Well, we are not free from doubt about this question. We are constrained to hold, in view of the statements of complainant's counsel, that further evidence will be produced in connection with the contracts in question that the objections should be overruled. Of course, as the evidence stands now it is clear the contracts are not admissible."

138 This respondent further answering says that the question as to whether the commission was limited to the issues framed by the pleadings was raised at other times before the Commission and it received testimony not admissible upon such issues, as will be seen by looking at the stenographer's minutes (pp. 122–3, 324 to 387, 746 to 757, 1340 to 1347).

And this respondent, further answering, alleges that this respondent was the last witness sworn before the Interstate Commerce Commission adjourned in May, 1903, and before this respondent was sworn it had clearly appeared that the counsel for said William Randolph Hearst insisted that he had the right to have the Interstate Commerce Commission investigate the whole business of mining, transporting, and selling coal, and incidentally thereto the question of what commissions various merchants, like this respondent, received for selling such coal on commission in the city of New York, to the end that th'reby counsel might obtain such exhibits and such testimony for some ulterior purpose. And this respondent understood the Interstate Commerce commission to sustain the legal right of the complainant and his counsel to continue such investigation before said Interstate Commerce Commission for such purpose. And this respondent now understands the Interstate Commerce Commission to claim by its petition that it has the right to make a general investigation into the character stated, into the business of mining

and selling coal, and into the business of selling coal upon commission in the city of New York, as a part of the trial of the issues created by the complaint of said William Randolph Hearst, and the answers of said railroad companies. But this respondent hereby claims that by virtue of the Constitution of the United States, the statutes of the United
139 States, and the proceedings had before said Commission, and the facts disclosed to said Commission, as appears by the stenographer's minutes, to which said Commission makes reference as a part of its petition, the question of what commissions this respondent received for selling coal after said coal had been mined and transported from the mines to the city of New York, is wholly immaterial and irrelevant to any issue before said Interstate Commerce Commission, or to any matter committed to said Commission by the act of Congress creating it, since such commission is only earned or paid after it has been transported to market and is not in any way connected with the transportation charges paid thereon, and in that said act of Congress does not give said Interstate Commerce Commission the right to inquire into the prices of commodities, or to fix the prices of commodities, or to inquire into the prices paid this respondent as a coal merchant for selling coal, or to fix the price he shall charge as a coal merchant for selling coal.

And this respondent, further answering, alleges that when the first contract with reference to the sale of coal was called for, while objecting to the same being made matter of record and put within the power and control of the counsel of said William Randolph Hearst, the parties did produce the same and did submit the same to said Interstate Commerce Commission, and therefrom it appeared that said contract was not relevant to the issues between said Hearst and said railroad companies on trial before said Commission, and was not relevant to the charges of said railroad companies for the transportation of coal, but only had to do with the sale of the coal at the breakers in the State of Pennsylvania, where the same is produced, as appears from a substantial copy of one of
140 said contracts, aside from the claims of the parties contained in the petition, from which it appears that it is a principal provision of said contract.

"Second. The buyer agrees to pay and the seller agrees to accept the following prices for said coal, and prepared in accordance with the standard hereinafter set forth and delivered f. o. b. railroad cars at the breakers: For all sizes above pea coal, sixty-five per cent of the general average, free on board, prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided."

That it further appeared from every witness inquired of on the subject, that similar contracts have been used in the purchase of coal in the State of Pennsylvania for a great many years; that for many years only sixty per cent of the price at tide points was paid to independent operators for their coal at the breakers; that since the alleged combination said independent operators have received sixty-five per cent, as appears by the contract in the petition, and by the undisputed testimony of witnesses sworn before the Interstate Commerce Commission upon this hearing; that the Commission itself recognized the fact that these contracts might

be incompetent, as appears from the stenographer's minutes of the proceedings before said Interstate Commerce Commission (pp. 198–199):

"Com'r PROUTY. Let me make a suggestion, Mr. Shearn. The Commission is of opinion that you are entitled to the evidence you say that contract will disclose, and we are also of opinion that the contracts
141 are evidence of those facts; but you could also probably show those facts in another way. You could put on the stand a man familiar with the actual transactions and ask him to state whether the coal of independent companies is handled that way, and to what extent. It is conceivable that that testimony might be admissible as not interfering with the rights of third parties when the contract might not be, and would it not be well for you to have a witness here and ask him those questions and let the whole thing go up at once?

"Mr. SHEARN. I shall do that. I have witnesses under subpœna who will be able to give such testimony, and who, I think, if not interfered with, will be willing to produce these contracts.

"Mr. CARR. I object to such an inference as that, that a witness he has has been interfered with by anybody. I do not propose to sit here and listen to a statement of that kind before this tribunal or any other.

"Mr. SHEARN. I shall follow it with a suggestion——

"Com'r PROUTY. You are not entitled to go into the private business of third parties, but you are entitled to bring out the fact that the coal of independent companies has been handled that way for some time. It might be that you would be able to show that by oral testimony when you would not have the right to do it by the contract."

And this respondent, further answering, alleges that said Hillside Coal & Iron Company, the Susquehanna & Western Coal Company,
142 and the Pennsylvania Coal Company, and many other corporations and persons, for each of which this respondent sells coal on commission, are each and all of them corporations or persons having the right to mine and sell coal, and having the right to employ this respondent to sell coal for them upon commission in the city of New York, or elsewhere, and having the right to pay the transportation charges thereon to get said coal to the city of New York, or to any other market therefor; also, that there is no controversy between said William Randolph Hearst and this respondent, or between said William Randolph Hearst and either of said persons or corporations for which this respondent sells coal, as to the commissions to be charged therefor by this respondent or by any other person or corporation. And this respondent insists the Interstate Commerce Commission has no jurisdiction to inquire into the matters aforesaid, by reason of the Constitution and statutes of the United States in such case made and provided.

And further answering said petition, this respondent alleges that the excerpts from the stenographer's minutes in said petition contained do not present the attitude of said Interstate Commerce Commission toward this respondent and other witnesses sworn as witnesses before said Commission, or toward the proceedings pending before said Commission, as will more fully appear from the extracts from the stenographer's minutes which have heretofore been inserted herein, and as will still more fully appear by an examination of said stenographer's minutes, and of the

exhibits laid before said Commission, to which reference is hereby made as a part hereof.

And further answering this respondent denies that the Commission was engaged in its duty to execute and enforce the act to regulate
143 commerce, or to inquire into the management of the business of common carriers, or that the questions asked and papers required were relevant to issues before them, or necessary to the Commission to enable it to discharge its duty, when such questions were asked and said papers were required; but, on the contrary, he respectfully alleges that such questions and papers are outside any issues or matters over which such Commission has jurisdiction.

Wherefore this respondent prays that the proceedings sought to be instituted by the Interstate Commerce Commission herein be dismissed, and the order to compel this respondent to answer questions which is sought from this honorable court, be denied, and that your respondent be given such other or further relief in the premises as may be proper, to the end that his constitutional and statutory rights as a citizen of the United States may be fully protected, and that he may be permitted to do his lawful business without disclosing the details thereof to any person not entitled thereto, or without disclosing the same in any proceeding in which they are not material and relevant.

SAMUEL T. PETERS,
New York City, N. Y.
By MOOT, SPRAGUE, BROWNELL & MARCY,
His Attorneys.

(Endorsed:) U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

144 In the circuit court of the United States, southern district of New York.

In the matter of the petition of the Interestate Commerce Commission for an order, or orders, requiring the attendance of witnesses and the production of books, papers, and documents.

The separate answer of William R. Taylor, secretary of the Philadelphia and Reading Railway Company.

William R. Taylor, answering the rule herein entered on the petition of the Interstate Commerce Commission, represents and shows:

I.

That he is the secretary of the Philadelphia and Reading Railway Company, a corporation of Pennsylvania, and has been duly served with a copy of the rule herein entered on June 2, 1903; that he had
145 previously been served with a subpœna duces tecum awarded by the Interstate Commerce Commission, as set forth in the petition of the Interstate Commerce Commission herein; that, in obedience to the said subpœna, he appeared before the Commission and remained in attendance until duly discharged, after having been examined; that in his examination the following proceedings were had, as appears by copy of the stenographer's notes on page 255:

"W. R. TAYLOR, witness called on behalf of the complainant, having been duly sworn, testified as follows:

"Mr. SHEARN. You are secretary of the Phildelphia and Reading Railway Company?

"Mr. TAYLOR. I am secretary of the Philadelphia and Reading Railway Company.

"Mr. SHEARN. And have been how long?

"Mr. TAYLOR. I have been since the organization of the company, the first of December, 1896.

"Mr. SHEARN. Before that time were you secretary of the Philadelphia and Reading Railroad Company?

"Mr. TAYLOR. I had been secretary of the Philadelphia and Reading Railroad Company since 1886.

Mr. SHEARN. You have been subpœnaed to produce all contracts for the transportation of anthracite coal entered into between that company and third parties since January 1, 1901?

"Mr. TAYLOR. Yes, sir.

"Mr. SHEARN. Are there any such contracts in existence?

"Mr. TAYLOR. There are no contracts of that character in existence.

"Mr. SHEARN. Have there been any such contracts entered into since January 1, 1901?

"Mr. TAYLOR. There never have been such contracts entered into in my experience with the company.

"Mr. SHEARN. Have there been any contracts entered into by that company with third parties for the purchase of authracite coal other than coal required for its own use?

146 "Mr. TAYLOR. No such contracts whatever.

"Mr. SHEARN. Who are the officers of the Philadelphia and Reading Railway Company?

"Mr. TAYLOR. Mr. George F. Baer, president; Mr. Theodore Voorhees, first vice-president; Mr. C. E. Henderson, second vice-president; Mr. W. A. Church, treasurer; and W. R. Taylor, secretary.

"Mr. SHEARN. Are you an officer of the Reading Company?

"Mr. TAYLOR. Yes, sir.

"Mr. SHEARN. What office do you hold?

"Mr. TAYLOR. I am secretary and treasurer. (Sic.)

"Mr. SHEARN. Who are the officers of the Reading Company?

"Mr. TAYLOR. Mr. George F. Baer is president; I am secretary, and Mr. W. A. Church is treasurer.

"Mr. SHEARN. Who are the directors of the Philadelphia and Reading Railway Company?

"Mr. TAYLOR. Shall I name them?

"Mr. SHEARN. Yes, sir.

"Mr. TAYLOR. Mr. Joseph F. Harris, Mr. John Lowber Welsh, George C. Thomas, H. V. McKean, and H. A. Dupont.

"Mr. SHEARN. How many of those gentlemen are directors of the Reading Company?

"Mr. TAYLOR. All of them.

"Mr. SHEARN. How many of them are directors of the Philadelphia and Reading Coal and Iron Company?

"Mr. TAYLOR. All, except one.

"Mr. SHEARN. Who is he?
"Mr. TAYLOR. Mr. McKean.
"Mr. SHEARN. Are you an officer of the Temple Iron Company?
"Mr. TAYLOR. I am not, sir.
"Mr. SHEARN. Have you ever been?
"Mr. TAYLOR. I have never been; no, sir.
"Mr. SHEARN. That is all.
"Mr. CAMPBELL. No questions.
"The CHAIRMAN. You are excused, Mr. Taylor."

147 Wherefore this respondent charges and alleges that he has fully answered all questions put to him before the said Commission and that he has not declined to produce any papers in his hands or possession mentioned in the said writ of subpœna duces tecum, or otherwise.

Wherefore this respondent prays to be dismissed hence, and that the rule herein entered as against him be discharged.

Respectfully submitted.

WILLIAM R. TAYLOR.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

William R. Taylor, being duly sworn, deposes and says that he is the respondent named in the foregoing answer; that he has read the same and knows the contents thereof, and that the facts therein stated are true.

WILLIAM R. TAYLOR.

Sworn to and subscribed before me this 8th day of June, A. D. 1903.
[SEAL.]
C. K. KLINK,
Notary Public.

My commission expires April 18, 1907.

(Endorsed:) U. S. circuit court, southern dist. of New York. Filed July 1, 1903. John A. Shields, clerk.

148 In the circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance of witnesses and the production of books, papers, and documents.

The separate answer of William G. Brown, secretary of the Philadelphia and Reading Coal and Iron Company, in his own behalf and on behalf of the corporation of which he is an officer.

William G. Brown, answering the petition of the Interstate Commerce Commission herein, represents and shows:

I.

That he is the secretary of the Philadelphia and Reading Coal and Iron Company, a corporation of Pennsylvania, created by and existing under an act of the general assembly of the State of Pennsylvania

approved May 8th, A. D. 1871, with power, among other things,
149 "to purchase, sell, transport, and mine coal, and to mine and manufacture iron; * * * to acquire by purchase, lease, or otherwise such lands as they may deem expedient; * * * to lease, sell, mortgage, or otherwise dispose of such land, or any rights, easements, or privileges therein; * * * construct all necessary buildings and fixtures necessary for the business of mining and for preparing coal for market, mining and manufacturing iron, and the accommodation of persons engaged in their employ in the said business," a copy of which said act and of the proceedings whereby the name of the company was changed from the Laurel Run Improvement Company to the Philadelphia and Reading Coal and Iron Company are hereto annexed and made part hereof, marked "Exhibit A."

II.

This respondent admits the creation and existence of the petitioner as alleged, and also the exhibition to them of the petition and complaint of William Randolph Hearst against the various railroad companies in the said petition mentioned. He admits the allegations of the petition in respect of the hearing of the said last-mentioned petition and complaint within the southern district of New York.

III.

1. This respondent further admits that the said Interstate Commerce Commission, on the application of the attorney for the said petitioner and complainant, awarded its writ of subpœna duces tecum to him directed, commanding him "to produce all contracts for the purchase or transportation of anthracite coal entered into since January 1st, 1901, between the Philadelphia and Reading Coal and Iron Company and any and all purchasers of anthracite coal or owners or operators of anthracite coal mines," as alleged in the said petition herein; but he is advised, and therefore alleges and charges, that the said writ of subpœna was improvidently awarded in that neither the respondent nor the company of which
150 he is an officer were parties to the proceedings then pending before the Interstate Commerce Commission, and that no opportunity was afforded him or the said corporation to show cause before the said Interstate Commerce Commission against the issuance and service of the said subpœna, nor to show that the said contracts are not documents relating to any matter then under investigation by the Commission, nor to show to the said Commission, as the truth and fact is, that it has no contracts whatsoever with any person whomsoever relating to the transportation of coal or any other commodity.

2. Further this respondent is advised, and so alleges and charges, that Paragraph XIII of the rules and practice in causes and proceedings before the Commission, providing that when it is sought to compel witnesses, not parties to the proceedings, to produce documentary evidence, the same may be awarded ex parte and without hearing, is unreasonable and improvident.

3. This respondent is further advised, and therefore alleges and charges, that the books, papers, tariffs, contracts, agreements, and documents

which the Commission has power under the act to regulate commerce to require to be produced, are only and solely books, papers, tariffs, contracts, agreements, and documents of the carrying companies subject to the act to regulate commerce, or of consignors or consignees having contracts with such carriers where the subject-matter of such contracts are being inquired into, and that the said provisions of the said act of Congress confer no power whatsoever upon the Commission to search for or inquire into or expose the private papers or other papers of parties not directly concerned in matters committed to the said Commission.

4. This respondent, for himself and for his said company, admits that the proceedings at the hearing before the Interstate Commerce Commission on April 22d, 1903, and set forth in folios 34 to 40, inclusive, referring to pages 243 to 258 of the stenographer's minutes of said
151 proceedings—though not fully—are sufficiently set forth in the said petition of the Interstate Commerce Commission to this court, save and except that the objection to the production of the said papers stated by counsel is omitted, which said statement was set forth by Mr. Thorne, of counsel with the Lehigh and Wilkesbarre Coal Company, as shown on page 220 of the said stenographer's minutes in the words following:

"Mr. THORNE. Witness, under advise of counsel, declines to produce the contracts for the reason that they are not germane to any issue presented before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and the contracts with third parties, who are not parties to this proceeding and action, are private business and should not be made public and disclosed in this proceeding."

5. This respondent is further advised, and therefore alleges and charges the fact to be, that the only showing before the Interstate Commerce Commission upon which the said writ of subpœna duces tecum was issued was the affidavit of Clarence J. Shearn, attorney for William Randolph Hearst, the petitioner and complainant, to the effect that he verily believed that all of the books, papers, and documents mentioned in the said application for a subpœna duces tecum would be of service in the determination of the case; that they contained material evidence necessary to the petitioner and complainant; that the contracts called for are ostensibly contracts for the purchase of anthracite coal from mine owners or operators upon a basis of a percentage, stated therein, of the price realized on the sale of coal at tidewater and other points of distance, but that said contracts are in reality, as will appear when they are construed in the light of the evidence to be adduced, contracts fixing the rate of transportation of anthracite coal from the mines to its destination, said rates appearing therefrom to be entirely different from the published tariffs of any of said railroad companies.

152 6. That during the hearing before the Interstate Commerce Commission there was under consideration the demand of the petitioner for the production by the Lehigh Valley Coal Company of certain coal-purchase contracts supposed to have been entered into by it with the certain miners and producers of anthracite coal whose operations were located on the line of the Lehigh Valley Railroad Company, whereupon a copy of one of said contracts was submitted to the consideration

of the Commission for the purpose of determining their admissibility in evidence, and thereupon the chairman of the Commission announced, as appears on page 193 of the stenographer's notes of the said hearing, the following:

The CHAIRMAN. "During the recess the Commission has briefly examined the blank contract which was submitted to our inspection by the courtesy of counsel. We understand from counsel that all the stock of the Lehigh Valley Coal Company, which is denominated the buyer in this contract, is owned by the Lehigh Valley Railroad Company, and it appears from an inspection of the contract that the prices paid to the seller are certain percentages of the prices for which coal is sold at tidewater terminals. If the balance retained is less than the amount paid the Railroad Company, the Coal Company sustains a loss in the transaction which is hardly to be assumed. However this may be, the facts alleged to be contained in these contracts may properly be shown, we think, and we also think that the contracts are competent evidence of the fact. We therefore overrule the objection and allow the contracts to be put in evidence."

And this respondent alleges that in respect of the contracts which he has been called upon to produce, the said inferences so set forth in the opinion of the chairman of the Commission are unwarranted and unwarrantable, in fact only a small proportion of the coal sold by the Philadelphia and Reading Coal and Iron Company reaches tidewater terminals, and only a comparatively small proportion enters into Interstate
153 Commerce; that in truth and in fact, owing to the divers markets to which this coal is consigned and the divers rates of freight to the said various markets, there remains to the Coal and Iron Company, on all its transactions for the purchase of coal, a large annual profit after paying full tariff rates to the railroad companies for transportation; that the inference of the Commission expressed in the words following: "If the balance retained is less than the amount paid the Railroad Company, the Coal Company sustains a loss in the transaction," could not apply to the contracts of any of said companies, unless all of the coal purchased was all shipped to a point where the transportation rate exceeded the balance remaining of the proceeds after paying sixty-five per centum of the f. o. b. price to the seller under said contracts; and further, this respondent avers that as appears by the undisputed testimony of George F. Baer, esq., hereinafter referred to, a large annual profit accrues to the said Philadelphia and Reading Coal and Iron Company from the sale of the coal purchased under said contracts after the payment of full, regular tariff rates for transportation, notwithstanding the said inference of the said Commission in such opinion, and of said Shearn in said affidavits.

7. This respondent is advised and believes, and therefore charges, that it is the uncontradicted purport and effect of the testimony of George F. Baer, esq., the president of this respondent's company and of other corporations, who was called as a witness before the said Commission on behalf of the petitioner and complainant; that there is no foundation whatsoever in truth and in fact for the various allegations on which said subpœna duces tecum was issued; that neither in their inception, nor in their operation nor effect do the contracts which this respondent is called

upon to produce, or either of them, in anywise relate to or bear upon any of the matters pending before the Commission under the said
154 petition and complaint of said Hearst; that said contracts are not and will not be of service in the determination of said case; that they do not contain evidence material to the petitioner and complainant; that they are not in reality contracts fixing the rate of anthracite coal from the mines to destination, as is alleged by said Shearn in his said affidavit, but that they are in truth and in fact, as they purport to be, bona fide contracts made in Pennsylvania solely for the uses and purposes therein mentioned; that neither in their inception nor in their performance have they any relation whatsoever to the subject of transportation; that the subject-matter thereof is confined to the sales and delivery of anthracite coal produced within the Commonwealth of Pennsylvania to be delivered there, regardless of the ultimate market to which the coal may be shipped, and also regardless of the transportation charges thereon; that the said contracts do not purport, in any degree, to be dependent upon the rates of transportation, paid or to be paid; that in view of the character of said contracts, as shown by the said testimony of George F. Baer, esq., they are wholly local and domestic contracts made and performable wholly within the State of Pennsylvania, and that therefore they in no wise bear upon or relate to commerce between the States or with foreign nations; that said contracts and the performance thereof are wholly of local cognizance and are without the jurisdiction of the Interstate Commerce Commission under the act to regulate commerce, and are wholly without the jurisdiction of the Congress of the United States, and therefore may not lawfully be inquired into here. All of which will more fully and at large appear by reference to the stenographer's notes of the testimony of the said George F. Baer, esq., before the Commission, a copy whereof is hereto attached and made part hereof, marked "Exhibit B." And this respondent further shows that it is the general result of all the testimony so far adduced before the said Commission that the said contracts are of the character, purport, operation, and effect in this paragraph set forth and not otherwise.

155 8. This respondent, for himself and his said company, further shows that he is ready and willing to appear before the Commission and to answer any question within his knowledge which the Commission may determine to be material bearing upon or relating to the relations of his said company as a shipper of interstate traffic with any of the respondent carriers in the proceeding pending before said Commission, and to produce any books, contracts, or other papers bearing upon or relating thereto, but this respondent respectfully objects to and protests against any order herein which may be construed by the Commission to require him or any subordinate officer or agent of his company to appear and testify concerning the private dealings of his said company as a merchant either in respect of its mining, purchase, or sale of any commodity, for that the same are neither within the cognizance of the said Commission nor of the Congress of the United States.

This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers upon the Commission power to require by subpœna or otherwise the attendance and testimony of witnesses, and the production of books, papers, tariffs,

contracts, agreements, and documents not directly and solely relating to matters under investigation pursuant to the provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States, and in derogation of the right of this respondent, and of the corporation of which he is an officer, to have its private books and private affairs as a merchant protected from unreasonable search or seizure.

And further, that the assumption of such power and authority on the part of the Congress of the United States is in violation of the tenth amendment to the Constitution, providing that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

156 And thereupon this respondent prays to be dismissed hence, and that the pending rule herein may be discharged as against him.

Respectfully submitted.

WM. G. BROWN,
Respondent.

CHAS. HEEBNER,
J. D. CAMPBELL,
JOHN G. JOHNSON,
Counsel.

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss:

William G. Brown, being duly sworn according to law, says on oath that he is the respondent named in the foregoing answer, that he has read the same and knows the contents thereof, and that the facts therein stated are true.

WM. G. BROWN.

Sworn to and subscribed before me this 8th day of June, 1903.

[SEAL.] C. K. KLINK,
Notary Public.

157 EXHIBIT A.

Act of assembly incorporating the Philadelphia and Reading Coal and Iron Company. Approved May 8th, A. D. 1871.

An act to incorporate the Laurel Run Improvement Company.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same, That John W. Lott, J. M. Hodge, E. J. Jones, O. H. Torbert, G. F. Rohrer, and their associates, and such other persons as may become holders of the stock of said company, are hereby created a body politic in law and in deed, by the name, style, and title of the Laurel Run Improvement Company, and as such shall have perpetual succession and all the powers, privileges, franchises, and immunities of a corporation.

SEC. 2. That the capital stock of said company shall consist of twenty thousand shares, of the par value of fifty dollars per share; and the president and directors shall have power, from time to time, to issue such an

additional amount of stock as they may deem necessary to carry out the objects of the corporation, or may issue the bonds of said company, bearing such rates of interest, not exceeding eight per centum per annum, and payable at such times as they may designate; or may issue both said stock and bonds, and dispose of either or both of the same at such price and in such way and manner as they may deem expedient; and shall have power to secure the principal and interest of said bonds by a mortgage or mortgages upon the whole or any parts of their property, real or personal, and their corporate rights and franchises acquired or to be acquired by said company.

SEC. 3. The said corporation shall have power to purchase, sell,
158 transport, and mine coal, and to mine and manufacture iron, and for this purpose the said company shall have power to acquire, from time to time, by purchase, lease, or otherwise, such lands as they may deem expedient; and may lease, sell, mortgage, or otherwise dispose of such land, or any rights, easements, or privileges therein; and may construct all necessary buildings and fixtures necessary for the business of mining and for preparing coal for market, mining and manufacturing iron, and the accommodation of persons engaged in their employ in the said business.

SEC. 4. That the corporators, or a majority of them, named in the first section of this act, over their joint signatures, shall prepare a certificate setting forth that they have elected a president and six directors of said company, and the powers and duties of said corporators shall thereupon finally cease and determine; and said certificate, when deposited in the archives of said company, shall be evidence of the election of the president and directors named; and such president and six directors shall adopt a form of subscription for stock, and when not less than five thousand shares shall have been subscribed for, and not less than five dollars per share shall have been paid in, a meeting of the stockholders shall be called at a time and place to be designated in a written or printed notice to be served upon each stockholder, either personally or by mailing the same to his place of residence; and at the said meeting or some adjournment thereof, the stockholders present, either in person or by proxy, shall have power by a majority of votes to elect a new president and a new board of six directors, or to continue the old president and the old board; and shall adopt such by-laws fixing the terms of office, qualifications, and election of president and directors, the time and place of holding an annual meeting of the stockholders and election of president and six directors, the convening of special meetings of stockholders, the calling in and enforcing by suit, forfeiture, or otherwise, of payment of stock subscriptions and such other matters connected with the business of the said company as they may deem
159 advisable; which said by-laws may be amended, altered, or repealed by a majority of votes at any general or special meeting of the stockholders; and at all corporate meetings or elections for any purpose whatsoever each share of stock shall entitle the holder to one vote.

SEC. 5. The stockholders, at their annual meeting or at some adjourned meeting, shall elect a president and six directors, who shall serve for the ensuing year and until their successors are elected; and any vacancy in

the office of president or directors shall be filled by the remaining directors, or president and directors, as the case may be; any four of the presidents and directors, for the time being, shall constitute a quorum, and shall be subject to the by-laws adopted by the stockholders, exercise all the corporate powers which the corporation may at any time lawfully exercise, including the power of appointing all such officers, agents, or employés as they may deem necessary, and may from time to time adopt, repeal, alter, or amend the by-laws for regulating the business of the company not inconsistent with those adopted by the stockholders; and it shall be lawful for the president and directors of said company to subscribe for and purchase the lands or stock of any other incorporated company in the State of Pennsylvania, and for any railroad or mining company existing under the laws of this State to subscribe for or purchase the stock, or to purchase or guarantee the bonds of the company hereby incorporated. This company shall pay into the treasury of the commonwealth a bonus of one-fourth of one per centum on the capital stock hereby authorized, or hereafter created, in four equal annual installments, and such taxes on dividends as is or may be provided by law; and the stockholders of said company shall be individually liable for all debts due mechanics, workmen, and laborers employed by said company, and for all materials and provisions furnished to said company, to be sued for and collected as is provided in the twelfth, thirteenth, and fourteenth sections of the act incorporating the Lackawanna Coal and Iron Company, approved the fifth day of April, one thousand eight hundred and fifty-three.

JAMES H. WEBB,
Speaker of the House of Representatives.
WILLIAM A. WALLACE,
Speaker of the Senate.

Approved the eighteenth day of May, anno Domini one thousand eight hundred and seventy-one.

JNO. W. GEARY.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, June 25th, A. D. 1874.

PENNSYLVANIA, *ss:*

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of the original act of the general assembly, entitled "An act to incorporate the Laurel Run Improvement Company," as the same remains on file in this office.

[Seal of Secretary's Office, Pennsylvania.]

In testimony whereof I have hereunto set my hand, and caused the seal of the secretary's office to be affixed, the day and year above written.

JOHN B. LINN,
Deputy Secretary of the Commonwealth.

In the court of common pleas for the city and county of Philadelphia.

In the matter of the petition of the Laurel Run Improvement Company for a change of its corporate name to the Philadelphia and Reading Coal and Iron Company.

And now, December 12, 1871, it appearing to the court that
161 the within petition was filed in the office of the prothonotary of this court, and that notice thereof was inserted in one newspaper printed in the county of Philadelphia, for at least three weeks, as directed by the order made by this court on the fifteenth day of November, 1871, and no reason being shown to the contrary, it is decreed and declared that the prayer of the said petition be granted, and that the name, style, and title of the Laurel Run Improvement Company be changed to the Philadelphia and Reading Coal and Iron Company, and that the said petition and the orders thereon be recorded in the office for the recording of deeds in this county.

E. M. P.

I hereby certify the foregoing to be a true and correct copy of the decree made on the twelfth day of December, A. D. 1871, in the matter of the petition of "The Laurel Run Improvement Company" for a change of its corporate name to "The Philadelphia and Reading Coal and Iron Company."

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, this fifteenth day of December, A. D. 1871.

[SEAL.] J. A. LOUGHRIDGE,
Pro. C. C. P.

AUDITOR-GENERAL'S OFFICE,
Harrisburg, June 25th, A. D. 1874.

I do hereby certify that the foregoing is a full and true copy of the original remaining on file in this office.

Witness my hand and seal of office, the day and year aforesaid.

[SEAL.] D. C. MAURER, for
HARRISON ALLEN,
Auditor-General.

162 EXHIBIT B.

Testimony of George F. Baer, esquire, before the Interstate Commerce Commission.

GEORGE F. BAER, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. You are the president of the Reading Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. And have been how long?

Mr. BAER. April, 1901.

Mr. SHEARN. Prior to April, 1901, were you in any manner connected with the Reading Company?

Mr. BAER. I was general counsel and director.

Mr. SHEARN. For how long were you a general counsel and director prior to April, 1901?

Mr. BAER. Well, I can not divide off the periods of time, but in a general way I have been either counsel or a director, and sometimes counsel and director, of the Reading Railway System since 1870.

Mr. SHEARN. You are also the president of the Philadelphia & Reading Railway Company?

Mr. BAER. I was speaking of the railway company now, not of the Reading Company.

Mr. SHEARN. I ask you about the Reading Company. You are the president of the Reading Company?

Mr. BAER. Will you just excuse me. My answers to the Reading Company as to the time of my connection with it must be limited to the time of the reorganization, which was in——

Mr. SHEARN. 1896?

163 Mr. BAER. 1896; yes; and the other answer as to the railway company and the rest of the answer applies to the term I have been associated with the railway company since 1870.

Mr. SHEARN. You are also the president of the Philadelphia & Reading Coal & Iron Company, are you not?

Mr. BAER. Since April, 1901; yes.

Mr. SHEARN. Were you in any manner connected with that company prior to that date?

Mr. BAER. Yes.

Mr. SHEARN. In what capacity?

Mr. BAER. I was counsel—one of the counsel of the coal & iron company from 1870——

The CHAIRMAN. Mr. Baer, if you will be good enough to lift your voice; we have difficulty in hearing you.

Mr. BAER. I was counsel of the coal & iron company up to the time of the receivership; at various times I have been a director of the coal & iron company, and after the reorganization of 1896 I was a director of the coal & iron company, and since April, 1901, I have been president of the coal & iron company.

Mr. SHEARN. You recollect there having been, prior to 1896, a company called the Philadelphia & Reading Railroad Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. That company, prior to 1896, owned all of the capital stock of the Philadelphia & Reading Coal & Iron Company, did it not?

Mr. BAER. Yes, sir.

Mr. SHEARN. You are also the president of the Central Railroad Company of New Jersey?

Mr. BAER. I am.

Mr. SHEARN. And have been since what time?

Mr. BAER. May, I think, 1901.

Mr. SHEARN. You are also the president of the Lehigh & Wilkesbarre Coal Company?

Mr. BAER. I am.

Mr. SHEARN. And have been since what time?

Mr. BAER. I think the fall of 1901.

Mr. SHEARN. Are you an officer of the Lehigh Coal & Navigation Company?

164 Mr. BAER. I am not.

Mr. SHEARN. You are the president of the Temple Iron Company?

Mr. BAER. I am.

Mr. SHEARN. And have been how long?

Mr. BAER. I was president of the Temple Iron Company—oh, for many years—I do not know how long, probably ten or twelve.

Mr. CAMPBELL. You mean in the early seventies, Mr. Baer?

Mr. BAER. Oh, no; I have been connected with it for many years, and I was president for, say, ten or twelve years prior to 1899, and then in 1900 I resigned the presidency of the Temple Iron Company and Mr. Thomas H. Watkins became president; and then about two years ago, I believe at the election of 1901, Mr. Watkins declined the reelection and I was elected president; in 1901, I think.

Mr. SHEARN. And have been president since that time?

Mr. BAER. I have been president since that time.

Mr. SHEARN. Mr. Watkins was president, then, for about a year?

Mr. BAER. A year and a half or two years.

Mr. SHEARN. Are you a director of the Lehigh Valley Railroad Company?

Mr. BAER. I am.

Mr. SHEARN. And have been how long?

Mr. BAER. About—let me see—I think I was only elected a director in 1902; January, 1902, I think.

Mr. SHEARN. Are you an officer or director of any other companies connected with the anthracite coal trade?

Mr. BAER. Oh, any number of them, minor constituent companies; I can not name them all. You will understand that the Reading Coal & Iron Company controls stock of different coal companies, and I am the president of those coal companies, and the same is true—I really do not know whether I am the president of the companies the stock of which is owned by the Temple Iron Company. I think I changed that, and that Mr. Law is the president.

Mr. SHEARN. Who is that; Mr. Law?

165 Mr. BAER. Mr. A. F. Law, who was vice-president of the Temple Company, and I think either he or Mr. Thorne—Mr. Thorne was president of the minor companies.

Mr. SHEARN. Mr. Samuel Thorne?

Mr. BAER. No.

Mr. SHEARN. Robert Thorne?

Mr. BAER. No; I have forgotten his first name, but he was the champion baseball man of Harvard—Brink Thorne.

Mr. CAMPBELL. Yale.

Mr. BAER. Yale, is it? He has resigned and another person has taken his place.

Mr. SHEARN. You are the president and director of more coal companies than you can remember easily, in other words?

Mr. BAER. Well, of some of these minor companies; I will furnish you a list of them all.

Mr. SHEARN. But of no other large companies?

Mr. BAER. No.

Mr. SHEARN. What is the Reading Company—a corporation organized under the laws of the State of Pennsylvania?

Mr. BAER. The Reading Company is a company having a special charter granted by the legislature of Pennsylvania. It is what we call the holding company of the Reading System. It owns the stock of the coal & iron company; it owns the stock of the railway company; it owns the stock of the Reading Iron Company, and owns the stocks of many other companies, all of which you will find enumerated in the annual report of the Reading Company.

Mr. SHEARN. Being mainly companies connected with the anthracite coal transportation?

Mr. BAER. Mainly; yes. Oh, not coal transportation; the Reading Coal & Iron Company is engaged exclusively in the mining and selling of coal. The railway company is a transportation company—the Reading Railway Company. There are other companies connected with
166 the railway company—the Atlantic City Railway, the Wilmington & Northern, and what we call the Reading System of railroads, the capital stock of which is owned by the Reading Company. The Reading Iron Company is a company engaged in the manufacture of iron, machinery, tubes and pipes, pig iron, and is also a mining company; it has ore mines and it has bituminous coal mines.

Mr. SHEARN. The Reading Company was originally called the "Excelsior" Company, was it not?

Mr. BAER. Its name was changed several times, probably it was incorporated "Excelsior," then the name was changed to the National. I cannot undertake to carry all those details. If they are important I will furnish you with them.

The CHAIRMAN. Mr. Baer, did I understand you to say that the report of the railroad company to its stockholders shows the stocks of all the companies?

Mr. BAER. Yes.

The CHAIRMAN. Have you any objection to furnishing a copy of that?

Mr. BAER. None at all.

Mr. SHEARN. I have one right here and I shall put it in.

Mr. BAER. Won't that satisfy you?

Mr. SHEARN. Yes. I shall put all of these reports in. The Reading Company, then, owns all of the stock of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Yes.

Mr. SHEARN. And all of the stock of the Philadelphia & Reading Railway Company?

Mr. BAER. Yes.

Mr. SHEARN. In other words——

Mr. BAER. Of course, now, you understand, with the qualification that there are certain shares of stock required to be held by persons to be qualified as directors.

Mr. SHEARN. But that is a nominal holding, is it not?

Mr. BAER. Practically, yes; I say we own all the stock, but I did not want any quibbling about the others.

Mr. SHEARN. But you know your annual reports show you own all the stock?

167 Mr. BAER. I say we do own all the stock.

Mr. SHEARN. Yes; every share of stock?

Mr. BAER. Every share of stock with the qualification of the stock that is transferred to qualify directors may or may not be owned by us. It is a question that I need not give an opinion upon.

Com'r PROUTY. Then the Reading stocks which sell on the market are the stocks of the Reading Company and not stocks of the Philadelphia & Reading Railway Company?

Mr. BAER. There are no securities of the Reading Railway upon the market, nor of the Reading Coal & Iron Company upon the market; the Reading Company is the one that issues the securities. The Coal & Iron Company joined in the mortgage to secure the issue of bonds in the reorganization, part of the reorganization scheme; but the stocks and and the bonds, when you hear of Reading stock and Reading bonds, that means the stock of the Reading Company and the bonds of the Reading Company.

Com'r PROUTY. And you say the Reading Company owns all the stock of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. The capital stock of the Philadelphia & Reading Coal & Iron Company is eight million dollars, is it not?

Mr. BAER. The reports will show that.

Mr. SHEARN. Yes, and of the Philadelphia & Reading Company, twenty million?

Mr. BAER. Yes; twenty or twenty-five; I beg your pardon, why can't you offer those reports; you ask me questions expecting me to keep in mind the capital stock of all the corporations I am connected with. It would be a pretty serious business; I do not believe a lawyer of your standing could remember all the data of his cases.

Mr. SHEARN. You are very much more courteous and kindly than your counsel, Mr. Baer.

Mr. BAER. Well, my counsel must take care of himself; I am sorry if he has been discourteous; I hope I will not be.

168 Mr. SHEARN. Now, please look at that page of the annual report of the Reading Company for 1902 and state whether the capital stock of the Philadelphia & Reading Coal & Iron Company is eight million dollars, and of the railway company, twenty million dollars?

Mr. BAER. I will look at the report and give it to you exactly. The report shows that the capital stock of the Philadelphia & Reading Railway Company is twenty millions. The report of the Philadelphia Coal & Iron Company, the balance sheet, shows that the actual stock of the Coal & Iron Company is eight million.

Mr. SHEARN. And what does the report show as to the amount of the stock of those two respective companies owned by the Reading Company?

Mr. BAER. You are taking up time asking me questions that appear in the record——

Mr. SHEARN. Well, it was on that page I have just pointed to you——

Mr. BAER. Philadelphia & Reading Railway Company stock, twenty million, and Philadelphia & Reading Coal & Iron Company, eight millions, and stocks of sundry companies fifty-one million two hundred and forty-four thousand.

Mr. SHEARN. In other words, Mr. Baer, when the Philadelphia & Reading Railroad Company was reorganized, the property was split up in this fashion: That the railroad property was turned over to the Philadelphia & Reading Railway Company and the mining property was left intact with the Philadelphia & Reading Coal & Iron Company, and then the stocks of those two companies were vested in the Reading Company?

Mr. BAER. In a general way, yes. Under the foreclosure proceedings the railroad was sold and was purchased by the gentlemen representing the security holders under the statutes of Pennsylvania; the railroad was reorganized under the name of the Philadelphia & Reading Railway Company. Under that statute the capital stock and the bonded indebtedness of the railway company was fixed. The Coal & Iron Company was not sold on foreclosure sale——

169 Mr. CAMPBELL. I think the witness' recollection should be refreshed at this point. My recollection is that the decree included the property of the Coal & Iron Company, but that it was afterwards——

Mr. BAER. What is the difference what your recollection was? In point of fact it was not sold, the decree did cover it and the Coal & Iron Company's charter and land were not sold at foreclosure sale.

Mr. CAMPBELL. At the proper time, if your honor please, I think it would be well to put in the record here all those foreclosure proceedings. There is a paper that covers it all and it is not necessary to go into more detail about it.

Mr. SHEARN. I accept Mr. Baer's recollection of it; it is undoubtedly correct. Now, then, the capital stock of the Reading Company is held by a voting trust, is it not?

Mr. BAER. Yes.

Mr. SHEARN. Who are the trustees?

Mr. BAER. J. P. Morgan, Mr. Packard—what is his first name?

Mr. GOWEN. C. W. S.

Mr. BAER. C. W. S. Packard; and who is the president of the United States Trust Company here?

Mr. CAMPBELL. Mr. Olcott.

Mr. BAER. Yes, and Mr. Olcott.

Mr. SHEARN. Mr. Olcott, yes. The business of the Philadelphia & Reading Company then is directed and controlled by the interests owning and controlling the Reading Company?

Mr. BAER. If you mean by that that the Reading Company votes the stock of the Philadelphia & Reading Railway, I answer yes. If you mean that the Reading Company after selecting the board controls the business of the railway company, I answer no.

Mr. SHEARN. But the Reading Company, of course, does vote the stock of the Philadelphia & Reading Railway Company?

Mr. BAER. Yes.

170 Mr. SHEARN. And the Reading Company also votes the stock of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Yes.

Mr. SHEARN. Well, the operations of the Philadelphia & Reading Coal & Iron Company covering the coal that it shall mine and the coal it shall transport and the price at which coal shall be sold rests ultimately with the management of the Reading Company, does it not?

Mr. BAER. It does not; when the directors, the president and the directors of the coal company are selected by the Reading Company their jurisdiction for that year has passed away and the officers and directors of the Reading Coal & Iron Company control and manage the business without any control of the Reading Company.

Mr. SHEARN. But there is no conflict between yourself as president of the Reading Company and yourself as president of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Indeed there is at times. I know of no more difficult work than to decide at times when you are president of different interests.

Mr. SHEARN. Is it not the fact, though, Mr. Baer, that in the last analysis the power of control over the business of the Philadelphia & Reading Coal & Iron Company is vested in the owners of the stock of the Reading Company?

Mr. BAER. Yes; as the ultimate power of control over any company is vested in the majority stockholders.

Mr. SHEARN. Precisely. How much stock of the Central Railroad Company of New Jersey does the Reading Company own? Just turn to this report, please, right here.

Mr. BAER. Yes, it is given here.

Mr. SHEARN. Page 13.

Mr. BAER. Why are you not content to take these facts as they are without asking me to remain here to tell you what is in these books? I am merely asking it to save time.

171 Mr. SHEARN. Does the Reading Company own 145,000 shares out of the total of 272,138 shares of the capital stock of the Central Railroad of New Jersey?

Mr. BAER. The Reading Company owns, par, 14,504,000 of the capital stock of the Central Railroad Company of New Jersey.

Mr. SHEARN. That is 145,000 shares?

Mr. BAER. 145,000 and a fraction.

Mr. SHEARN. And the total is 272,138, is it not?

Mr. BAER. I do not remember that, but we hold the majority of the stock.

Mr. SHEARN. Please look at page 13 here in your annual report of 1901.

Mr. BAER. Of the Jersey Central?

Mr. SHEARN. No; of the Reading.

Mr. BAER. Oh.

Mr. SHEARN. State how many shares——

Mr. BAER. Well, my answer to that would be that I can not tell what the shares are now; at that time that was correct.

Mr. SHEARN. That is, in June 30th, 1901, the Reading Company owned 145,000 shares out of a total of how many?

Mr. BAER. There were 272,138; there have been a few shares issued since, but we still have a majority.

Mr. SHEARN. And the Central Railroad Company of New Jersey owns all of the capital stock in the Lehigh & Wilkesbarre Coal Company, does it not?

Mr. BAER. Oh, no.

Mr. SHEARN. Owns a large majority, does it not?

Mr. BAER. Owns a majority, but there is a large outstanding minority of that stock.

Mr. SHEARN. Does it also own the control of the Lehigh Coal & Navigation Company?

Mr. BAER. Oh, no.

Mr. SHEARN. Then, by virtue of the ownership of stock, the owners of the stock of the Reading Company not only control the operations and destiny of the Philadelphia & Reading Railway Company and
172 Coal & Iron Company but also of the Central Railway of New Jersey and of the Lehigh & Wilkesbarre Coal Company?

Mr. BAER. By virtue of the holdings of stock the Reading Company elects the board of the Central Railroad of New Jersey, and the Central Railroad of New Jersey, by virtue of its holdings of stock in the Lehigh & Wilkesbarre Coal Company, can select the board of that company—not all the members of it because by cumulative voting the minority could be represented, but the minority seem never to have made any complaint with our management.

Mr. SHEARN. Is the stock of the Erie Railroad Company also held by three voting trustees?

Mr. BAER. I don't know. I have heard so, but I can not testify to that. I am not connected with the Erie Company.

Mr. SHEARN. Do you know who owns the control of the Lehigh Valley Railroad Company stock?

Mr. BAER. Indeed I don't.

Mr. SHEARN. You do not?

Mr. BAER. I do not.

Mr. SHEARN. Mr. Baer, do you know the approximate area of the anthracite coal field of Pennsylvania; is it about 470 square miles?

Mr. BAER. I can not give you an opinion on that.

Mr. SHEARN. There are three divisions of the fields, are there not?

Mr. BAER. Generally, yes, of the regions you speak; of the Wyoming and the Lehigh and the Schuylkill.

Mr. SHEARN. And the Reading reaches the Schuylkill region principally, does it not?

Mr. BAER. Yes.

Mr. SHEARN. What railroad companies reach the anthracite coal fields connecting those fields with tide water?

Mr. BAER. Well, let us begin on the south. Pennsylvania Railroad, Reading Railroad, Lehigh Valley, the Central Railroad of New Jersey through its leased line, the Delaware, Lackawanna & Western, the Erie, and what is that Susquehanna road called?

173 Mr. SHEARN. New York, Susquehanna & Western?

Mr. BAER. Yes; New York, Susquehanna & Western.

Mr. SHEARN. New York, Ontario & Western?

Mr. BAER New York, Ontario & Western.

Mr. SHEARN. Yes; those are the only means of communicating by rail between the anthracite coal fields and tide water, are they not?

Mr. BAER. I think so.

Mr. SHEARN. Do you know what proportion of the entire workable anthracite coal fields are owned and controlled by the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. The Reading System through its control of—let me do some thinking; I am not an encyclopædia that I can answer offhand without some reflection—taking the Lehigh & Wilkesbarre and the Philadelphia & Reading Coal & Iron Company, I think we control 62 to 63 per cent of the unmined coal, but that is an estimate based on the reports of geologists and guesses made as to what is hidden in the ground. But I think that was the estimate that was approved by the coal commission and is substantially correct.

Mr. SHEARN. I observe on page 13 of your annual report for 1901 a statement that the acquisition of the control of the Jersey Central is not only of enormous advantage because of additional facilities given the system but that through this the Reading now owns and controls about 63 per cent of the unmined coal in Pennsylvania.

Mr. BAER. That is my recollection. I did not recall that I had stated it in the report.

Mr. SHEARN. By the way, it was in January, 1901, that the Reading purchased the control of the stock of the Central Railroad of New Jersey, was it not?

Mr. BAER. My present recollection of it is that it was the last week in December or the first week in January.

Mr. SHEARN. The last week in December, 1900, or the first week in January, 1901?

Mr. BAER. About that time.

174 Mr. SHEARN. What proportion of the workable anthracite coal area is owned by the Lehigh Valley Coal Company?

Mr. BAER. I do not recall the figures.

Mr. SHEARN. In figures corresponding with those you have given as to the Lehigh & Wilkes-Barre and Reading companies, the Lehigh Valley Coal Company's control of the fields is said to be about 16 per cent. Is that according to your recollection?

Mr. BAER. I do not know. I never investigated what the subdivisions of the other holdings are. I may have seen statements, but I made no investigation. I was not particularly interested except in our own.

Mr. SHEARN. Of course you are a director of the Lehigh Valley Railroad Company?

Mr. BAER. And therefore must know everything about the Lehigh Valley Coal Company?

Mr. SHEARN. And therefore, I suppose, are interested in the Lehigh Valley Coal Company.

Mr. BAER. I am not a director of the Lehigh Valley Coal Company.

Mr. SHEARN. But you are of the railroad company?

Mr. BAER. Yes, sir; and in a general way know about its business, but I do not recollect those particular facts.

Mr. SHEARN. Is it not a fact that the holdings of the Reading Coal & Iron Company and the Lehigh & Wilkes-Barre Coal Company and

the Lehigh Valley Coal Company together amount to 80 per cent of the entire workable coal area?

Mr. BAER. I have stated about what my recollection is of the Reading's control, and that I did not know what the Lehigh Valley's is in any way, and by adding your two calculations together I can not be made to say that it is 80 per cent or any other per cent.

Mr. SHEARN. I thought that might suggest it to you. Do you know what percentage approximately of the output of anthracite coal is carried from year to year by the Philadelphia & Reading Railway Company?

175 Mr. BAER. Well, the percentage varies from year to year. You will find in Ruley's Tabulated Statements, which are published in all trade journals at the end of the year, the actual figures, and I prefer that you depend upon them and not upon my recollection of them. In a general way, it runs somewhere around 21 per cent.

Mr. SHEARN. I have in my hand a report on the coal trade of the United States issued by the Bureau of Statistics of the United States Treasury Department, edited by O. P. Austin, Chief of the Bureau, in which he states that the percentages of shipments of anthracite from 1896 to 1901 have been as follows: 20.89 per cent, 20.2 per cent, 19.6 per cent, 20.32 per cent, 20.07 per cent, 19.60 per cent. Do those figures strike you as being approximately correct?

Mr. BAER. I suppose they are correct.

Mr. SHEARN. For the Lehigh Valley for the same years: 15.63 per cent, 15.4 per cent, 16.4 per cent, 15.92 per cent, 15.32 per cent, and 15.51 per cent. Do those strike you as being approximately correct?

Mr. BAER. I assume they are true. It is a Government report. Why should it not be true?

Mr. SHEARN. This same report shows that the Central Railroad of New Jersey transported during the same years, 11.58 per cent, 11.4 per cent, 11 per cent, 11.31 per cent, 11.77 per cent, and 14.06 per cent. From your knowledge of the operations of that company do those strike you as being approximately correct?

Mr. BAER. I presume they are correct.

Mr. SHEARN. The Philadelphia & Reading Coal & Iron Company is in debt to the Reading Company in the sum of about $79,000,000, is it not?

Mr. BAER. Yes, sir; $79,002,220.56.

Mr. SHEARN. You treat that in your accounts as a loan account, do you not, and charge the Philadelphia & Reading Coal & Iron Company one and one eighth per cent per annum interest on it?

Mr. BAER. The history of that is this: The Coal and Iron Company owed the railroad company that amount of money and the pur-

176 chasers at the sale bought all the accounts of the railroad company and all the claims of the railroad company against the coal & iron company, and it was transferred by the purchasers to the Reading Company, and as the coal & iron company was not foreclosed and its charter remained, that is carried as a liability against the coal & iron company.

Mr. SHEARN. And you make a charge of 1⅛ per cent per annum against that company as interest on that debt?

Mr. BAER. We do not have any fixed sum. The rate of interest the coal & iron co. pay depends upon yearly earnings of the company, and we have no agreement as to a fixed rate of interest. It just suited our convenience to appropriate that much out of the assets of the coal & iron company—out of the profits, I mean, of the coal & iron company for a given year, but we may if we earn enough to pay three or four per cent probably charge three or four per cent interest. That is an open question.

Mr. SHEARN. That is, all that is left over from the operations of the coal & iron company, if anything, goes to the Reading.

Mr. BAER. Unquestionably. It is a stockholder and creditor.

Mr. SHEARN. I observe in the report you hold in your hand for 1902 there is a charge of interest, 1⅛ per cent against this loan of seventy-nine millions?

Mr. BAER. That was all we thought the coal & iron co. could afford to take out of its earnings that year and pay over to the Reading Company.

Mr. SHEARN. Is it not a fact, Mr. Baer, that the organization of and existence of the Philadelphia & Reading Coal & Iron Co. is simply an attempt to get around the constitutional provision prohibiting a railroad company from engaging directly or indirectly in mining coal?

Mr. BAER. Mr. Shearn, the coal & iron co. is a corporation of the State of Pennsylvania authorized to do certain things. It exists there under the laws of the State of Pennsylvania and it was not organized and does not exist for the purpose of evading any laws of the
177 State of New York or of the United States. If the organization of the coal & iron company is illegal or of the Reading Co. we will be glad to have that tested in any form you see fit to select.

Mr. SHEARN. You have practiced law a great many years?

Mr. BAER. I am sorry to say. I would not like to tell you how many. You might get at my age.

Mr. SHEARN. You are familiar with the constitution of the State of Pennsylvania. Do you recollect section 5 of article 17 of the constitution of the State of Pennsylvania, which is as follows:

"No incorporated company doing business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company directly or indirectly engage in any other business than that of common carrier, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines from manufactory on its railroad or canal not exceeding 50 miles in length."

Mr. BAER. I do, sir.

Mr. SHEARN. And you are of opinion that although all the stock of this company is owned by the Reading Company, it having formerly been owned by the Philadelphia & Reading Railway (sic) Company—all the capital stock of it is owned by the Reading Company, which is also a creditor of the Philadelphia & Reading Coal & Iron Company to the extent of seventy-nine million dollars, it is not engaged directly or indirectly in the mining of anthracite coal.

Mr. BAER. I am of the opinion as a Philadelphia lawyer that that section of the constitution of 1874 has no application whatever to the charter of the Philadelphia & Reading Coal & Iron Company, nor to the Reading Company, and that therefore that provision of the constitution of
178 Pennsylvania does not apply, and the supreme court of Pennsylvania in a number of cases, to which I would be glad to refer you if you desire to study constitutional questions of Pennsylvania, have decided that the existing charters prior to the adoption of the new constitution were not affected by that constitutional provision. Now, that is the opinion of a lawyer which you happened to draw out in examining a president of a railroad.

Mr. SHEARN. That being the case, Mr. Baer, what is the occasion for having a separate organization for the Philadelphia & Reading Coal & Iron Co., a separate staff of officers, separate stock, and separate accounts, and all these other arrangements?

Mr. BAER. What do you mean? In the orderly conduct of business the Philadelphia & Reading Coal & Iron Co. exercises the corporate franchises granted to it. Those corporate franchises are exceedingly valuable. They were granted prior to the adoption of the new constitution under the franchises then granted, which under the Dartmouth College case and under the decisions of the State of Pennsylvania are inviolable. The Philadelphia & Reading Coal & Iron Co. can hold lands and do business, and in order to do that it must have an organization. It has that organization and carries on business. Does that answer your question?

Mr. SHEARN. Yes, sir; that suggests the reason the Philadelphia & Reading Coal & Iron Co. was not included in the foreclosure sale.

Mr. BAER. It does. I frankly tell you that I, as one of the attorneys responsible for the reorganization, thought that charter was so valuable that no risk could be taken, and therefore there was no foreclosure of the Reading Coal & Iron Co. We preserved the charter as we preserved the charter of the Reading Company, which antedates the new constitution. The railway company is subject to the new constitution because, under the reorganization act of the State of Pennsylvania, when a railroad is foreclosed the purchasers are authorized to organize a new company possessed of the old franchise, but subject to the stipulation that they shall file an acceptance of the new constitution.

179 Mr. SHEARN. Then you have not accepted the new constitution?

Mr. BAER. The railway company has.

Mr. SHEARN. But not the Reading Coal & Iron Company?

Mr. BAER. The Reading Coal & Iron Company has not, and I think as long as I have anything to do with it will not.

Mr. SHEARN. Then, by virtue of whatever rights you have under this legal theory of yours, you are now accomplishing indirectly what the constitution of the State of Pennsylvania directly prohibits?

Mr. BAER. I decline to answer that question in that way. I have stated to you the facts, and although I am a lawyer it is not necessary on my examination that you and I should become a debating society and discuss legal questions.

Mr. SHEARN. Very well. Do you know anything about the attempt to lease the Central Railroad of New Jersey to the Port Reading Railroad Company in 1892?

Mr. GOWEN. We object to that.

Mr. SHEARN. Do you know that the Central Railroad of New Jersey was leased to the Port Reading, owned by the Philadelphia & Reading Railway (sic) Company, in 1892?

Mr. BAER. Oh, yes.

Mr. SHEARN. And that the Lehigh Valley was also leased to that same company?

Mr. BAER. Yes, sir.

Mr. SHEARN. And that the lease of the Central of New Jersey to that company was thereafter set aside in the courts of New Jersey?

Mr. BAER. I know that as a lawyer; yes, sir.

Mr. SHEARN. You now, however, have the same control over the Central Railroad of New Jersey and the Lehigh & Wilkesbarre Coal Company by virtue of the ownership of the stock that you had under the lease that was set aside, have you not?

180 Mr. BAER. No; the control by lease and the control by stock in law are two different things, but I suggest to you that that is a question which probably only interests the State of New Jersey and the Reading Railway Company. I am not aware that any jurisdiction has been given to this very able body to go into questions of the power of a corporation to hold or lease railroads in New Jersey. I supposed that that, at least, was reserved to the State.

Mr. SHEARN. What was the object and purpose of the purchase in January, 1901, or December, 1900, of the control of the stock of the Central Railroad of New Jersey by the Reading Company?

Mr. BAER. The object was to get a majority of the stock of the Central Railroad of New Jersey. That was the object.

Mr. SHEARN. Why did you want that majority of the stock of that railroad company?

Mr. BAER. Because it was a connecting railroad and we thought it a valuable thing to control and operate. The Central Railroad of New Jersey was the road over which the traffic of the Reading System must go to reach New York, and in the exercise of the ordinary judgment of the every-day man we thought it would be advisable to get the control of a road that was so important to us as a terminal, and which, falling into adverse hands, might cut off the great Reading System from your great city of New York. Those were the general business reasons that led us to buy the stock of the Jersey Central.

Mr. SHEARN. Was there not a more important moving reason than that, that the purchase vested in your control sixty-three per cent of all the unmined coal in the State of Pennsylvania?

Mr. BAER. It was not the controlling factor. It was a factor. We would be glad to buy more coal lands at a fair price. The laws of the State of Pennsylvania permit us to do it. If you have any collieries to sell and can sell them at a fair price, and we can finance it, we will buy them.

Mr. SHEARN. Or any more railroads?

Mr. BAER. Any more railroads we can buy at a fair price that
181 we think would be useful to us, we will buy.

Mr. SHEARN. Anything that enables you more completely to dominate the anthracite coal situation?

Mr. BAER. My dear sir, that is not the purpose. It is for the purpose of making the Reading System a paying system, to earn fair money for its stockholders and its security holders. We do not aim to dominate the anthracite situation, nor any other trade. We do aim to get as much anthracite traffic and miscellaneous traffic and bituminous traffic and iron traffic as, in the ordinary course of business, it is possible for us to get. If you want to locate on our lines we will offer you every inducement for the development of your business to give us traffic.

Mr. SHEARN. The more thoroughly you dominate the anthracite coal situation the more money you make for your stockholders?

Mr. BAER. Naturally. The more things you can sell, if they can be sold at a profit, the greater profit I suppose you make. Is not that simple and axiomatic?

Mr. SHEARN. It is, absolutely. And the more coal supply you control, it makes it the more easy to control the price at which it shall be transported and the price for which it shall be marketed?

Mr. BAER. Do not those things follow naturally?

Mr. SHEARN. I should say so.

Mr. BAER. Well, what is the dispute about it, then?

Mr. SHEARN. Prior to 1899 and for several years prior, the coal had been transported, had it not, from the anthracite regions on a percentage basis when it had to do with the coal of independent producers?

Mr. BAER. Not entirely.

Mr. SHEARN. Well, largely?

Mr. BAER. Some of the coal was transported on a percentage basis and some was not?

Mr. SHEARN. By the way, do you know about what percentage of the output of anthracite coal is mined by the subsidiary, independent operators—operators other than the great coal companies owned by the railroad companies? Is it about thirty per cent?

182 Mr. BAER. I won't venture to give you those figures offhand. I really do not recall. I will furnish you that information. I really do not like to guess at an important thing like that.

Mr. SHEARN. I do not care to have you guess.

Mr. BAER. I can not remember all those figures.

Mr. SHEARN. During those years immediately preceding 1899, was not the greater part of the coal of independent operators carried on a percentage basis, which was either fifty-five or sixty per cent of the price realized on prepared sizes at tide water?

Mr. BAER. Yes; a large proportion of the coal.

Mr. SHEARN. Did it come to your knowledge in 1899 that there was general dissatisfaction with that among the independent operators?

Mr. BAER. In 1899?

Mr. SHEARN. Yes, sir.

Mr. BAER. No. In our companies we had no dispute with any of our operators. We have very few individual operators on the Reading System, and I had no knowledge in 1889, that I recall, of any trouble with our operators in reference to that.

Com'r PROUTY. Mr. Baer, I am not certain I understand you. Did you say that the coal of independent operators was transported to market for a per cent?

Mr. BAER. Oh, no; I did not say that.

Mr. SHEARN. Well, it was purchased for transportation?

Mr. BAER. Oh, no. The different coal companies purchased from individual operators at the rate of sixty per cent and in some places fifty-five per cent. The Reading Coal and Iron Company would buy the output of a man on the basis of sixty per cent, or it might be—depending on the quality of the coal—fifty-five. Some of the other coal companies would do the same thing—the Lehigh Valley Coal Company and the only railroad company I know that did that was the Delaware, Lackawanna and Western, which possesses a peculiar charter, an old charter of the State of Pennsylvania in which there is a clause
183 authorizing the railroad company to carry on the coal business, and it is by virtue—as the president always told me, and I suppose it was true—of the peculiar clause in the Delaware, Lackawanna & Western charter that they have made those contracts.

Com'r PROUTY. I wanted to know whether there was ever a time when the railroad companies or any of them transported coal to market for a percentage of the selling price of the coal.

Mr. BAER. I never knew of such a time. It never was so in our company and I never heard of it, except, as I tell you, the Delaware, Lackawanna & Western, exercising the peculiar power of their charter, and they may have made an arrangement of that kind under the provision of the charter, but it was not as a railroad company.

Com'r PROUTY. There would not be any reason previous to the passage of the act to regulate commerce why such a contract might not be made, would there?

Mr. BAER. I think not.

Com'r PROUTY. But in fact it was not done?

Mr. BAER. I do not recollect that it was ever done.

Mr. SHEARN. But the fact was that the greater part of the independent coal was disposed of by the owners of the coal either to railroad companies or companies owned by railroad companies on a percentage basis of the price at tide water, which was either 55 or 60 per cent?

Mr. BAER. I have already given my answer to that and there is no use repeating it, because in repeating it, unless I carefully observed the language you put into my mouth, I might inadvertently say something I did not intend to say. You are naturally trying to get me to say that this was a transportation problem. As it was not, I am not going to say so.

Mr. SHEARN. Oh, no. You called it a purchase contract, and I call it a transportation contract.

Mr. BAER. You and I do not want to call things by the same name. I can only give you the facts.

Mr. SHEARN. What led to this was the Commissioner's ques-
184 tion. Undoubtedly the word "transportation" was inadvertently used first. That is why I repeat the question using the word "purchase." I say it is a fact, is it not, that in the years immediately preceding 1898 and 1899 the major part of the coal produced by independent operators was disposed of by them, either to railroad companies

or to coal companies owned by railroad companies, on a percentage basis of the prices realized on prepared sizes or the sizes at tide?

Mr. BAER. I answer by saying that a large part—whether it was a majority or what proportion I do not know—of the private operators' coal was sold to coal companies whose capital stock was undoubtedly controlled by different railroad companies, and that in one instance the purchase was made by a railway company having the special power granted in its charter to purchase coal and sell coal. Does that answer your question?

Mr. SHEARN. Yes, sir; perfectly. When did it first come to your knowledge that there was general dissatisfaction among independent operators with those contracts?

Mr. BAER. In 1900.

Mr. SHEARN. You knew in 1899, did you not, of the existence of the firm called Simpson & Watkins?

Mr. BAER. Yes, sir.

Mr. SHEARN. They owned and operated a large number of collieries in the Lackawanna region, did they not?

Mr. BAER. Yes, sir; up around Scranton.

Mr. SHEARN. Did it come to your knowledge in 1899 that a railroad was being projected by independent operators from that region to tide water?

Mr. BAER. Yes, sir.

Mr. SHEARN. To be known as the New York, Wyoming & Western?

Mr. BAER. I do not recall the name.

Mr. SHEARN. Do you know Mr. E. B. Sturges, of Scranton?

Mr. BAER. I think I have met Mr. Sturges, but can not recall him; in the sense of knowing him, I do not. If he walked in here now, I would not know him.

185 Mr. SHEARN. Did it come to your knowledge at that time that a large proportion of independent operators in that region had organized a railroad corporation and had pledged the future output of their mines to that railroad for transportation, if it should be built?

Mr. BAER. Yes, sir.

Mr. SHEARN. Did you know that Simpson & Watkins were actively interested in that railroad venture?

Mr. BAER. I knew they were connected with it; yes. How active they were in it, I do not know.

Mr. SHEARN. Did you know what their output was?

Mr. BAER. I had it investigated in January and February, 1899. We had a report, made under my direction by some experts of their collieries, and a valuation put upon them, and all that data was before me as a lawyer at that time and also as president at that time of the Temple Iron Company, but I can not recall it.

Mr. SHEARN. Do you recollect that their output exceeded a million tons a year?

Mr. BAER. That is my impression.

Mr. SHEARN. In other words, they were a prominent factor in this movement to build this railroad, with such an output as that, were they not?

Mr. BAER. I do not know how to answer that question unless you allow me to tell the story of what I do know, and then I will tell it.

Mr. SHEARN. Do you recollect what the total tonnage was pledged to this New York, Wyoming & Western Railroad?

Mr. BAER. I never knew anything about that except the general talk, and I never believed that anybody seriously contemplated building a railroad.

Mr. SHEARN. You knew a railroad was incorporated?

Mr. BAER. Oh, that is all right. That is one stage in a game that is easily played in this country.

Mr. SHEARN. You knew also that the stock was largely subscribed for, did you not?

Mr. BAER. I have no doubt that is true; but I do not know it.

186 Mr. SHEARN. And that written contracts pledging the entire output of these mines to the railroad had been entered into by these various independent operators?

Mr. BAER. I suppose so; but I knew that while that was going on many of these operators were coming to us and sending gentlemen in this city begging us to buy their mines, and I generally put two and two together.

Mr. SHEARN. I suppose among those gentlemen were Simpson & Watkins?

Mr. BAER. Among those gentlemen were Simpson & Watkins, and a number of other gentlemen whose names I can give if it is the business of the Commission to enquire into collateral things of that kind.

Mr. SHEARN. We will confine our attention to Simpson & Watkins. You say that you were for a number of years connected with the Temple Iron Company.

Mr. BAER. Yes, sir.

Mr. SHEARN. That was a specially incorporated company, chartered by the legislature of Pennsylvania?

Mr. BAER. Yes, sir.

Mr. SHEARN. With a charter antedating the former constitution?

Mr. BAER. Yes, sir.

Mr. SHEARN. What was its capital stock originally?

Mr. BAER. $240,000, I think.

Mr. SHEARN. When did you become president of it?

Mr. BAER. I told you before I did not know—about 1899 or 1900. I was president probably ten years.

Mr. SHEARN. Ten years before 1899?

Mr. BAER. Yes.

Mr. SHEARN. What was the business of the Temple Iron Company?

Mr. BAER. The business of the Temple Iron Company was the manufacture of pig iron.

Mr. SHEARN. Where did it carry on that business?

Mr. BAER. At the village of Temple in the county of Berks in Pennsylvania.

Mr. SHEARN. How large a plant did it have at the end of 1898 and the beginning of 1899?

Mr. BAER. A single-stack anthracite furnace.

Mr. SHEARN. How many men did it employ?

187 Mr. BAER. I suppose from one hundred to two hundred. I can not tell just how many. Sometimes we worked mines and sometimes we did not.

Mr. SHEARN. Do you recollect what its annual output was?

Mr. BAER. It produced about two hundred tons—say from 200 to 225 tons a week of pig iron at that time.

Mr. SHEARN. Did this company use any or acquire any anthracite coal for carrying on its business?

Mr. BAER. It used anthracite coal, and at one time it had stock in the Kaska William Coal Company.

Mr. SHEARN. At what time?

Mr. BAER. Well, between 1873 and 1880; when it was first organized.

Mr. SHEARN. In 1898 or 1899?

Mr. BAER. It owned no coal lands whatever in 1899. It only owned ore lands and a lot of houses and a first-class anthracite furnace in the village of Temple.

Mr. SHEARN. It acquired no anthracite coal in 1898 for carrying on its business?

Mr. BAER. Oh, yes; it did.

Mr. SHEARN. How much anthracite coal did it acquire to do its business?

Mr. BAER. It generally takes a ton and a half of anthracite coal for a ton of pig iron, and it may run up, depending on the working of the furnace, to one and three-quarters.

Mr. SHEARN. Suppose it is two tons?

Mr. BAER. You can make that calculation yourself.

Mr. SHEARN. How much of the capital stock of the Temple Iron Company did you own in 1898?

Mr. BAER. I do not recall; I think I owned one-fifth.

Mr. SHEARN. Were there many stockholders?

Mr. BAER. No; Major Smith and Colonel Smith—oh, there were only half a dozen stockholders.

Mr. SHEARN. You held approximately one-fifth?

Mr. BAER. I held about one-fifth, and the others, with the exception of William Kleiner's family—do you want to know all about that?

188 Mr. SHEARN. When did it first occur to you to buy up the stock of the Temple Iron Company?

Mr. BAER. When I wanted to use the charter for the purpose of holding the stock of the collieries that Simpson & Watkins sold us.

Mr. SHEARN. When did it first occur to you that it was desirable that you should buy the collieries of Simpson & Watkins?

Mr. BAER. When?

Mr. SHEARN. Yes, sir.

Mr. BAER. The purchase of the Simpson & Watkins collieries arose in this way: Simpson & Watkins had associated with them certain gentlemen of this city who were interested in the general business of the country, and those gentlemen, who had large interests in Simpson & Watkins' properties, suggested that it would be a good thing for the different coal companies to purchase the Simpson & Watkins collieries.

Mr. SHEARN. Did they say why it would be a good thing?

Mr. BAER. I will tell you. Mr. Watkins had got up a theory that it was possible to get up a great company located here in the city of New York which would buy and sell coal, and that by consolidating the different coal sales agencies and having one purchasing company the scheme could be carried out. The gentlemen associated with Simpson & Watkins, members of their company, were very much opposed to Simpson & Watkins going into the construction of that rival railroad, and did not believe there was any serious purpose except to induce the companies to buy out the collieries. When the whole subject was brought forward a syndicate was formed for the purpose of buying these collieries. Mr. Watkins outlined his plan of how this purchasing company might act, what it might do. The various railroad companies were seen, and they agreed to help finance the concern by a purchase of the stock in the future. The companies bought the stock—first the Temple Iron Company increased this little furnace, increased its capital stock, under
189 the laws of the State of Pennsylvania, and issued bonds for the purpose of paying for these collieries, the collieries being represented by small corporations, and we purchased the stock. In one case, an interest in a limited partnership, we did not get the whole of the concern. Now, after we made that purchase and the railroad companies agreed to guarantee the stock and bonds, because they had agreed to purchase it when called upon by the trustee, if that call is made in 1904, optional; and absolute, I think, in 1907. The object at the time of that purchase was undoubtedly as affecting the consideration to relieve Simpson & Watkins's partners and to get Messrs. Simpson & Watkins out of that anthracite situation.

Mr. SHEARN. Do you mean out of that railroad situation?

Mr. BAER. Whatever you may call it.

Mr. SHEARN. That was it, was it not?

Mr. BAER. We did not want, as railroad companies, to encourage the building of another railroad into that country for the purpose of affecting and taking from us our business, and under the laws of the United States and of Pennsylvania any railroad corporation has a right to take legal means to secure and hold its traffic, and, acting under that power and with a view to carrying out Mr. Watkins's scheme of making a great purchasing and selling company here in the city of New York which would save many thousands of dollars, the properties were acquired. That is the whole story about it. Subsequently we discovered, or I did, that Mr. Watkins's scheme was absolutely undesirable; that it would not work at all. I opposed it and refused to make the Temple Iron Company the selling agent of the Reading Company, and the other presidents did the same thing, and then Mr. Watkins resigned and I took the presidency, and we have operated it since. We have operated these collieries sold to the coal company; the presidents of these companies guaranteeing the debt were made the directors, because they are the people most directly interested, and in addition to these directors two or three of the
190 old directors of the Temple Iron Company are in the board—Mr. Smink, Mr. Connard, and Mr. Broden, who are my personal friends and were the old stockholders in the Temple board, and they remain there; but the majority is controlled (composed of [?]) by the presidents of the companies who guaranteed the payment of the bonds. Now, is that explicit enough?

Mr. SHEARN. I think it is very explicit. As you very frankly say, the object of increasing the capital stock of the Temple Iron Company—increasing its bonds and putting out this stock and bonds was to eliminate Simpson & Watkins from the anthracite situation there?

Mr. BAER. I did not say that—not at all.

Mr. SHEARN. Well, to relieve Simpson & Watkins from the situation?

Mr. BAER. It was with a view of carrying out a scheme to get up this purchasing company, which was a favorite hobby of a good many gentlemen here in New York. They thought a good deal of money would be saved by doing so. Mr. Watkins was enthusiastically in favor of it. I was willing to advise the purchase of these collieries, because I found they were worth the money and would be a desirable purchase, and because I was anxious—I do not deny it—to get Simpson & Watkins tied up to us with their coal interests and not be Ishmaelites in the field.

Mr. SHEARN. And not be tied up with the projected railroad?

Mr. BAER. I did not care about that. I knew that if Simpson & Watkins were out of the way, Mr. Sturgis and some of the others who wanted to sell their collieries if they could find a buyer——

Mr. SHEARN. You did not want another railroad constructed to tidewater, did you?

Mr. BAER. Of course not. It is an economic waste to build railroad when the present railroads have not traffic enough to pay. That is the dream of people who are idealists and not business men, to build more railroads than there is necessity for.

191 Mr. SHEARN. If this railroad had been constructed it would have resulted in competition, would it not?

Mr. BAER. It would have resulted in having to buy out that railroad and increasing the cost of everything to the public. That is what always results from a party of people trying to build a railroad for the purpose of affecting an established business. They have to be bought out in the end or go into bankruptcy, and the general story is always the same. You can not build railroads when there is no demand for them and make them profitable any more than you can build houses and make them profitable when there are no people to occupy them.

Mr. SHEARN. If this road had been built and you had not succeeded in buying it out, it would have resulted in competition in the business of transporting coal?

Mr. BAER. Not at all; I think not. The railroad would have had to charge such high prices for hauling that coal in order to pay the investors that it would not have hurt us at all, so far as competition goes, but to the extent of withdrawing traffic from our road it would have increased our cost of transportation, and the general result to the public would have been a higher instead of a lower cost.

Mr. SHEARN. It would have brought coal to tidewater?

Mr. BAER. It would not have brought it there for nothing. The cost of transportation on a new railroad, I presume you will admit, must be greater than on an old established railroad.

Mr. SHEARN. But this railroad would have brought coal to tidewater?

Mr. BAER. Undoubtedly, if it had been built.

Mr. SHEARN. That coal would have been for sale here in competition with your coal, would it not?

Mr. BAER. I think not. I think the cost of getting it here would have been so great that it could not compete with our coal.

Mr. SHEARN. If the competition had not been as great as you say——

192 Mr. BAER. If they could have carried that coal to New York for half what it cost us, they could sell it for less than we could sell.

Mr. SHEARN. You wanted to prevent such a result and took these steps by purchasing the collieries of Simpson & Watkins?

Mr. BAER. I did not want to do anything of the kind. I advised these railroad companies to secure the traffic they had, and if a rival company were to come to-day and undertake to build a siding into a colliery that is shipping over any road with which I am connected and it was necessary to buy that colliery to save the traffic to my road, I would do it; would not you?

Mr. SHEARN. Not if it is against the law.

Mr. BAER. If it is against the law, point to the law, and I will not do it. I believe in the majesty of the law.

Mr. SHEARN. The Sherman antitrust law.

Mr. BAER. I welcome you to proceed under the Sherman antitrust law, and if anything we have done is contrary to the law of the land we will abide by the decision of the proper tribunal. There are no people more interested in maintaining law and order than we are. I have seen enough of doubtful administration of the law, and if we are sinners against any law that you or your friends can enforce, go into the proper forum and try your hand. We will be there, and if we are guilty we will abide by the judgment. I am getting tired of some of your friends assuming a virtue superior to the rest of us and trying to make out that the business men of this country are a gang of conspirators, trying to evade the laws of this country. We have as much respect for the law as your client or the people condemning us.

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Mr. SHEARN. Now, Mr. Baer, as president of the Temple Iron Company, did the answer put in by the Temple Iron Company in the proceeding before Attorney-General Davies come under your notice or observation?

Mr. BAER. I suppose so. I do not know whether it did or not. Did I sign it, Judge [addressing Judge Campbell]?

193 Mr. CAMPBELL. No, sir.

Mr. SHEARN. No; the judge did the signing.

Mr. BAER. I am not able to do all the business in detail of a great railroad system.

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Mr. SHEARN. Mr. Bear, I call your attention to the version of this Temple Iron Company purchase given in the answer of the Temple Iron Company filed with the attorney-general of the State. After denying our wicked and unfounded inferences, it says:

"The truth and fact is that, having determined to take measures and secure to itself a permanent supply of coal by acquiring an interest" ——

Mr. CAMPBELL. I would like to object to that. It is not competent or material for any purpose. In connection with my objection I want to

make a little statement. At the time of the preparation of that answer I had no officer present; the president was away, and I did the best I could with the lights I had. If it is not accurate it is not my fault.

Mr. SHEARN. It is sworn to by you.

Mr. CAMPBELL. To my best knowledge, opinion, and belief. I want to say in addition that I afterwards had occasion to consult Mr. Baer, and when he explained the actual terms of the operation, they were somewhat different; but the paper is immaterial.

Mr. BAER. It is no statement of mine. I do not think I saw it at all. I can not be held responsible for every paper in a railroad proceeding.

Mr. SHEARN. I want to know if this correctly states what took place:

"The truth and fact is that having determined to take measures and secure to itself a permanent supply of coal by acquiring an interest in the said several coal companies, it called upon the several railroad companies mentioned to aid it with their credit to enable it to raise the necessary funds for said purposes."

194 Mr. BAER. That is right.

Mr. SHEARN. "The mines of the said several companies being located upon the lines of the said several railroads"——

Mr. BAER. That is right.

Mr. SHEARN. Were any located on the Reading?

Mr. BAER. No, sir.

Mr. SHEARN. What was the interest of the Reading?

Mr. BAER. It was on account of this proposed purchasing company. Our coal was to be handled in New York. We believed it was such a good investment that the company, under the name of Drexel & Company, went into it. We thought and still think it was a valuable investment. You will see how much we took and paid for that stock. We were in the syndicate and were the only—not the only, but a good many of the subscribers did not take their stock. They took the usual form of the syndicate selling to the public. Simpson & Watkins had a large block and held it until Mr. Simpson resigned.

Mr. SHEARN (continuing reading). "The mines of the said several companies being located upon the lines of the said several railroads, the said railroad companies, being thereunto specifically authorized so to do by the laws of the State of Pennsylvania, did aid, by the extension of their credit and by the guarantee of securities issued by this respondent to the end that they might severally continue to secure to themselves the traffic derived from the several operations of the said several companies in like manner as they had enjoyed the same theretofore."

The Philadelphia & Reading have not enjoyed any of this traffic, had it?

Mr. BAER. Yes, sir.

Mr. SHEARN. Had the Reading Company enjoyed any traffic?

Mr. CAMPBELL. It is not a railroad.

Mr. SHEARN. What do you say as to that?

Mr. BAER. That is the answer of the Reading Company and not of the Reading Railroad Company.

195 Mr. SHEARN. This is the answer of the Temple Iron Company and states that the object was to secure a permanent supply of coal for the Temple Iron Company, and you do not agree with that?

Mr. BAER. Of course I do not. The Judge was mistaken.

Mr. SHEARN. How did you come to fix on the various percentages by which the stock and bonds of these——

Mr. BAER. That was left to me as attorney, having charge of all the details. I was responsible as attorney for the selection of the Temple charter and everything connected with it, and the question of how these guarantees should be made was a subject of long and difficult negotiation. The people who were to take the stock and bonds wanted the joint guarantee of all the companies and the presidents of the Delaware & Lackawanna at the time being, or at least the attorneys—I should say the officials of the Delaware & Lackawanna and some of the other companies, the Reading amongst them, thought a joint guarantee was not fair, that some of the companies were stronger than others, and after considerable reflection of the subject I finally made the proposition that it would be fair to make separate guarantees and base the purchase of the stock and the guarantees on the tonnage, the gross tonnage, of each of the guarantor companies, and I think, upon looking at the statistics for the previous year, I reached the conclusion that 3⅛ or 3½—I do not remember which—per cent on the actual product on the amount each road sent to market, would probably be a fair basis; and it was upon that basis, as I recollect it now, that I fixed those guarantees.

Mr. SHEARN. The guarantee of the Reading is 20.50?

Mr. BAER. Oh, no; it is not.

Mr. SHEARN. Excuse me, it is 42.25?

Mr. BAER. It is not anything of the kind. It is 29 and a fraction.

Mr. SHEARN. Do you expect to prove the fact to be different from what it was stated yesterday?

196 Mr. SHEARN (sic). I expect to show the facts I stated yesterday, but we have not proved what the propositions were.

The CHAIRMAN. I thought Mr. McAnulty testified——

Com'r PROUTY. Mr. Shearn stated that the Reading guarantee was 29 per cent.

The CHAIRMAN. My recollection is that some one testified that these percentages were based on the experience of preceding years as to how much the roads carried.

Mr. SHEARN. That was my statement.

Mr. CAMPBELL. It was orally stated by counsel but is not in proof.

Mr. SHEARN. Yes, sir; the Reading percentage was 29.96, was it not?

Mr. BAER. Yes; I think so. I think I took roundly a basis of probably 3⅛ per cent on nine millions output of the coal and iron company property.

Mr. SHEARN. For the previous year or a period of years?

Mr. BAER. For a period of years? I can not remember. The fact is it was based on the tonnage of the respective parties, and that is all you want.

Mr. SHEARN. And the New York, Susquehanna & Western was 4.68 per cent, was it not?

Mr. BAER. I do not remember that.

Mr. SHEARN. Can you recollect that the Lehigh Valley was 22 and a fraction?

Mr. BAER. I do not think that is fair to read through a paper and ask me about other companies.

Mr. SHEARN. Well, as long as we are going to adjourn, I will ask you about those percentages at the next meeting, if you will kindly refresh your memory.

The CHAIRMAN. There must be ample means of showing that.

Mr. SHEARN. The contracts will, if they will produce them, but they will not produce them.

Mr. BAER. Then, how are you going to get it in orally?

Mr. SHEARN. You have already testified to one and have shown a disposition——

197 Mr. BAER. I am glad you think I am showing a good disposition. My dear sir, I am wise enough as a client to let my counsel try my case. I know what the proverb about that is, "When a man is his own lawyer he has a fool for a client," is it not?

The CHAIRMAN. Is there any objection to suspending the examination at this point?

Mr. SHEARN. Not at all, but I wish to have the chairman understand why I ask these questions—because they refuse to produce the contracts.

The CHAIRMAN. Mr. Baer, could you without inconvenience appear before the Commission next Wednesday morning at 10.30?

Mr. BAER. Of course, I am perfectly willing to come. I can not say I can do it without inconvenience. It is a great inconvenience just now with strikes on my hands—with the adjustment of those troubles in the Schuylkill region, which seem not to have been adjusted.

The CHAIRMAN. How would it suit you to say 2 o'clock?

Mr. BAER. I would prefer to have it at two o'clock.

The CHAIRMAN. It may be that your examination will not be concluded that afternoon.

Mr. BAER. I will take my chances of not getting through in the afternoon.

The CHAIRMAN. Very well; the examination of Mr. Baer is suspended until Wednesday of next week at two o'clock. We will take a recess now until two o'clock.

At 1.10 o'clock p. m. the Commission took a recess until 2 o'clock.

AFTER RECESS.

The CHAIRMAN. Mr. Shearn, are you ready to proceed?

Mr. SHEARN. Yes, sir. Will Mr. Baer please take the stand?

GEORGE F. BAER, recalled:

Mr. BAER. You will permit me, Mr. Shearn, to call attention
198 to some slight errors I made in speaking of the charter of the Temple Iron Company, which I think I designated as a special charter. The explanation is this: Congressman Clymer and myself drew the original act. I thought it was a special act. It was passed on the the 21st of March and we organized the company on the 22nd of March, 1873. There is a provision in the act to this effect:

"The incorporation of any association of persons under the provisions of this act shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature; and the franchises granted shall be construed according to the same rules of law and

equity as if it had been created by special charter, and no modification or repeal of this act affect any franchise obtained under the provisions of the same."

The other error I made——

Mr. SHEARN. Have you the charter with you?

Mr. BAER. Yes, sir.

Mr. SHEARN. We will offer it in evidence.

The same is marked "Exhibit No. 24."

Mr. CAMPBELL. I want to offer the usual objection to the production of these papers, having reference only to parties in Pennsylvania. They have no significance or bearing on the issues before your honors under the act to regulate commerce.

The CHAIRMAN. The objection is overruled and the paper will be received.

Mr. BAER. The other correction I desire to make is that this furnace when I became president had a capacity of only about 225 tons a week. I overlooked the fact that the improvement, the new stack we built, which increased its capacity to 3,000 tons a month—about 100 tons a day—was made just a year or so preceding the time of the sale, and the other matter which Judge Campbell called my attention to is the fact that the lands of the coal & iron company were not sold. I did
199 not understand—there was an interruption at the time—that the lands in the mortgage were sold—in the foreclosure mortgage—to the company itself and its franchises were sold.

Mr. SHEARN. Who owns the lands?

Mr. BAER. The lands were purchased by Coster & Stetson, who represented the committee of the bondholders, and in the reorganization they reconveyed them to the coal & iron company.

Mr. SHEARN. Which still holds them?

Mr. BAER. Which still holds them. It is only a technical error.

Mr. SHEARN. Did you have an opportunity to ascertain what proportion of the entire anthracite output comes from independent mines? I asked you when you were on the stand before whether it was about thirty per cent, and you said you would furnish that information.

Mr. BAER. I found that our company—I can only speak for our company—I looked at that—the proportion is about one million tons out of nine. We buy from private operators who ship over our lines from nine hundred to eleven hundred thousand tons a year, varying with the conditions of trade.

The CHAIRMAN. It all amounts to about nine millions?

Mr. BAER. Yes, sir. Part of this coal we buy—three-fourths of it—is mined (by us and [?]) by tenants of ours, parties to whom we have made leases, and the other quarter comes from individuals operators who are not mining on lands owned or controlled by us.

Com'r PROUTY. Is it a condition of the lease that they shall sell to you?

Mr. BAER. No, sir; I think not. No, I am sure that provision is not in the lease. Most of them are old leases and I do not remember looking at them recently.

Com'r PROUTY. Is any coal mined on the line of your road which is not handled by the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. On the line of our road?

Com'r PROUTY. Yes, sir.

200 Mr. BAER. Oh, yes; there are private operators who sell their own coal and pass it over our road.

Com'r PROUTY. Can you tell us how many tons of that coal are handled annually?

Mr. BAER. I am giving the total of the shipping of the private operators——

Com'r PROUTY. I understood you to say you purchased one million tons.

Mr. BAER. On an average about a million.

Com'r PROUTY. Are there any private operators on your line who sell their own coal?

Mr. BAER. Yes, sir.

Com'r PROUTY. Can you tell us the amount of that?

Mr. BAER. I will take 1901. That would be a reasonably full year. (Referring to book.) I do not think I can give that without taking too much time. I will send you an accurate statement of it. It can be ascertained by taking the coal that the railway company reports as transporting and the number of tons in the coal & iron company report, and the difference between those two will give that figure. It will take some time to get at it.

Mr. SHEARN. If the Commission please, I desire to have noted the appearance as associate counsel for complainant of ex-Governor Budd, of California, whom I desire to introduce to the Commission.

Com'r PROUTY. Does any coal that originates on other lines reach your line for transportation?

Mr. BAER. Not on the Philadelphia & Reading, with the exception probably of one or two small collieries that have connections—small branch roads that have connections with us and the Pennsylvania. There are some other collieries. The Lehigh Valley reaches into the same territory and connects with some of the collieries. We have a map here showing all sidings.

The CHAIRMAN. I did not quite understand your statement about mining the coal from lands leased by you?

Mr. BAER. We lease some of our lands to tenants that mine the coal.

The CHAIRMAN. And you mine some of it directly?

201 Mr. BAER. Yes, sir; the bulk of it is direct. The Reading Coal & Iron Company is operating to-day thirty-four collieries and five washeries.

The CHAIRMAN. About what is the normal output of the collieries you operate directly?

Mr. BAER. From eight to nine million tons a year.

The CHAIRMAN. And the output of the collieries you lease?

Mr. BAER. They are about 750,000 tons a year.

The CHAIRMAN. And then there are nine to eleven hundred thousand tons that you buy?

Mr. BAER. From nine to eleven hundred thousand, which includes some of the coal mined by our own tenants.

The CHAIRMAN. Then in addition——

Mr. BAER. There is some private coal.

Com'r PROUTY. Are the leases you make terminable at will?

Mr. BAER. No, sir. I do not know of any terminable at will. I have not made any leases under my administration. These are generally old leases.

Com'r FIFER. How long do they run?

Mr. BAER. As a general thing, thirty years.

Com'r PROUTY. How many collieries do you own that you do not operate?

Mr. BAER. That we do not operate?

Com'r PROUTY. Yes, sir. You said you owned some that you did not operate, and some that you did operate.

Mr. BAER. We have a number of collieries undergoing repair, not in condition to operate just now. I think the number of collieries we have is thirty-nine, and when I spoke of thirty-four being operated I meant those that are absolutely mining coal to-day. A few of them are not, for various reasons.

Mr. SHEARN. You spoke of some gentlemen who are interested in what you term the general business of the country being associated with Simpson & Watkins, calling to your attention this project of a general sales department for all the companies.

202 Mr. BAER. Yes, sir.

Mr. SHEARN. Were any of those gentlemen connected with any of these respondent railway companies?

Mr. BAER. Indeed I could not tell. I can not tell, and decline to disclose their names and say who they were. I do not think I am privileged to say who had private conversations with me on that subject.

Mr. SHEARN. Was Mr. J. P. Morgan one of them?

Mr. BAER. He was not. I will answer that negatively. I will answer no further in that way, because that is a way you might go over all the people in New York and by elimination you would finally get the man.

Mr. SHEARN. Did that project for a general sales company to handle all coal of these companies at tide water meet your approval at the outset?

Mr. BAER. It did not.

Mr. SHEARN. You said that a number of the other railroad presidents were seen by some one or other while this project was under contemplation and discussion. By whom were they seen, so far as you know?

Mr. BAER. I do not know. I do not recall. I was called in as counsel at a stage there——

Mr. SHEARN. Counsel for whom?

Mr. BAER. Counsel to put this whole matter in shape. I was called in by Mr. Coster, who was on the executive committee of the Reading Company and also of the Reading Coal & Iron Company. My connection with it began by Mr. Coster suggesting to the executive board, of which I was a member, that it would be a good thing for the Reading to take an interest in a syndicate being formed for the purpose of buying these powers (sic—collieries [?]), and I was directed to look into the thing and take charge of the legal status of it for the Reading Company, and other counsel were brought in—Mr. Stetson—and Simpson & Watkins had counsel, and there were some gentlemen interested in the collieries, and some were lawyers, and some had counsel. It was a long transaction. I can not recall it.

Mr. SHEARN. What part did you have in outlining the
203 advantages of the scheme to the presidents of other railroad companies?

Mr. BAER. None whatever.

Mr. SHEARN. Do you know who it was that promoted the scheme among the other railroad companies?

Mr. BAER. I do not know.

Mr. SHEARN. It was presented to the presidents of other railroad companies?

Mr. BAER. I think so. Of course Mr. Watkins was probably the man that did the negotiating. It was his scheme.

Mr. SHEARN. Did you have any conversation with Mr. Thomas, who was then chairman of the Erie, relative to it?

Mr. BAER. I suppose I did. I do not recollect any particular conversation about it.

Mr. SHEARN. Well, there was an agreement made, was there not, by six of these companies for the guarantee of the stock and bonds of the Temple Iron Company?

Mr. BAER. There was not a general agreement made.

Mr. SHEARN. It was an agreement bearing the same date and identical in terms, except as to percentages, was it not?

Mr. BAER. Yes; but it was not a general agreement. I do not remember whether it was dated the same day, but there was an agreement reached that these different companies should guarantee the bonds in the proportions named in the guarantee, but the details of how that was brought about, I do not remember.

Mr. SHEARN. But you said the arrangement of all those percentages was left to you?

Mr. BAER. Yes, sir; the division of how they should be was left to me to determine.

Mr. SHEARN. That is, it was left to you by the presidents of the six railroad companies?

Mr. BAER. Well, I do not know.

Mr. SHEARN. How did you get your authority to fix upon those percentages?

204 Mr. BAER. As counsel. I was representing the Reading Company and generally I was representing everybody. Mr. Stetson and I became the general counsel of the scheme. You know how those things are carried out. When we got the scheme in, there was a fee taken out for each of us, out of the general fund.

Mr. SHEARN. We know how they are generally done, but that does not get on the record this particular case.

Mr. BAER. I have no recollection that it was done in any other way——

Mr. SHEARN. How did you get authority, for instance, to fix the percentage of the guarantee for the Erie Railroad Company?

Mr. BAER. I did not have authority. I simply made a suggestion.

Mr. SHEARN. To whom?

Mr. BAER. Probably to the Erie Railroad—probably to Mr. Thomas.

Mr. SHEARN. Have not you any recollection?

Mr. BAER. Not the slightest.

Mr. SHEARN. There is no doubt you did so?

Mr. BAER. I have not the least doubt that I suggested to Mr. Thomas that the plan I had outlined was a fair way of fixing that guarantee. I have not the least doubt of it.

Mr. SHEARN. From whom did you obtain authority to fix the percentage of the Lehigh Valley?

Mr. BAER. I did not have any authority, but I have no doubt I talked with Mr. Walker about that. He was president at the time.

Mr. SHEARN. With whom did you talk for the Delaware, Lackawanna & Western percentage?

Mr. BAER. I do not remember. I do not think I saw anybody about that. I think somebody else did that. I do not recall. I doubt if Mr. Truesdale was president then.

Mr. SHEARN. They are interested in this guarantee to the extent of nineteen and a fraction per cent. Before they were obligated to that and before it was fixed by you. I suppose you had to be authorized to do it by someone?

205 Mr. BAER. I could not be authorized to do that. All I could do was to suggest that that was the proper way to do it and then the respective boards of directors of the companies would have to give the officers authority to make the guarantee. I made this recommendation. No doubt Mr. Stetson approved of it; but which one of us saw the particular president and communicated our theories to him, I can not say.

Mr. SHEARN. You testified that the matter of the percentages was all left to you to fix on.

Mr. BAER. Only in the sense of making out a recommendation. Nobody gave me authority to fix these percentages. It was doubtless suggested that I, as counsel more familiar with the subject than the other counsel, that I should suggest a plan that would be fair between the companies, and I made that suggestion, and the companies, through their boards of directors, in the usual way, accepted it.

Mr. SHEARN. Well, did some officer of the Delaware, Lackawanna & Western Railroad tell you to go ahead and make up a tentative percentage for their guarantee?

Mr. BAER. I have no recollection of being in communication with any officer of the Delaware, Lackawanna & Western. I can not recall any. I do not think Mr. Truesdale was president at that time. I am quite sure he was not, and I am sure I did not see any officer of the Delaware & Lackawanna. I can not recall having any communication with anybody connected with the Delaware, Lackawanna & Western.

Mr. SHEARN. Who authorized you to fix on the percentage of 17.12 per cent for the Central Railroad of New Jersey?

Mr. BAER. Nobody authorized me, as—I repeat what I said—I suggested that that should be the plan.

Mr. SHEARN. To whom did you make that suggestion?

Mr. BAER. I can not tell to whom I made it. It was probably in writing. There was certainly some conference about it in which this plan was suggested. I probably in the case of the Jersey Central
206 saw Mr. Maxwell myself. I talked with him frequently about this and may have written him.

Mr. SHEARN. In what way did you get it before the presidents of these different companies that these different percentages were deemed by you to be fair?

Mr. BAER. I can not tell. Either by writing or conversation with somebody. Mr. Stetson may have seen some of them, Mr. Watkins may have seen some of them, and Mr. Thomas may have seen some of them. I can not tell how that was done. I only know it was done. There is no question about it, is there?

Mr. SHEARN. Do you recollect now what the various percentages of the guarantees were? I was asking you that the other day when we closed. Do you recollect the Lehigh Valley?

Mr. BAER. No; I can not recollect anybody's percentage except the percentage of the Reading, which I happened to look at. The percentage of the Reading was 29 and something. I can not recall the others.

Mr. SHEARN. Well, did not you have any meeting with these presidents at which this scheme of guarantee and scheme of purchase was discussed and finally decided upon?

Mr. BAER. I never had.

Mr. SHEARN. Do you know how it came to be decided upon—agreed to by the presidents of these six companies?

Mr. BAER. By somebody undertaking to speak for them and subsequently the matter being presented to their boards and the boards approving of the act and authorizing the guarantee to be placed. How else would it be done?

Mr. SHEARN. Did you have any conference with any of these railroad presidents before you actually made the contract with Simpson & Watkins?

Mr. BAER. I did not make the original contract with Simpson & Watkins.

Mr. SHEARN. Who made it?

Mr. BAER. I do not know.

207 Mr. SHEARN. Did you have any conference with them before it was made?

Mr. BAER. No; the tentative contract and understanding was reached here in New York between some people, as I understood, before I was called in, and the suggestion for us to take an interest came later. Then Mr. Stetson and I finally took up the whole subject together, acting as attorneys—as I tell you, Simpson & Watkins' attorney was a gentleman whose name I have forgotten, a lawyer in the city of Philadelphia. We drew the agreements.

Mr. SHEARN. Well, how did it come to your knowledge that the presidents of these companies approved or disapproved of the scheme for a general sales agency for the entire anthracite trade here in New York?

Mr. BAER. That came afterwards, after the company was organized; I mean after the Temple Company took over these collieries, and in the ordinary course of business the question came up before the board of directors of the Temple Company, of which I was a member—these questions were taken up and consideration was postponed from time to time.

Mr. SHEARN. But the plan of a general sales department had been outlined to you by Simpson & Watkins before the purchase?

Mr. BAER. Yes, sir. I do not know whether it was before that purchase or not. At some time a scheme was presented by Mr. Watkins. You must remember that Simpson & Watkins held a large interest in this company—they did not sell out—they held a million dollars of stock.

Mr. SHEARN. I am coming to that. I understood you to say that one of the moving impulses in the acquisition of the Simpson & Watkins collieries was a proposition, seriously entertained, for making the Temple Iron Company in reality the selling agency for these six different companies at tide water.

Mr. BAER. Well, not as broad as that; not for all these six companies.

208 Mr. SHEARN. Which company was left out?

Mr. BAER. No company was left in. The proposition was simply this: Mr. Watkins suggested that the expenses of the sales of coal in New York would be enormously reduced by having a common company here that would sell such coal as the companies desired to turn over to it, instead of having a number of different men here as agents selling coal on commission. The commission at that time was probably ten cents a ton, and he had a scheme that was plausible and would have worked out, of making a sort of clearing house for anybody that wanted to sell coal, and he thought the expense of the business could be reduced by making a large selling company and that the Temple Company could make a great deal of money that way.

Mr. SHEARN. Was one of the elements considered by you in that situation that it would make it easier to maintain a uniform price at tide water?

Mr. BAER. Not at all.

Mr. SHEARN. That was not considered as an advantage?

Mr. BAER. It was not considered at all.

Mr. SHEARN. Now, then, do you know whether this plan of having the Temple Iron Company do the selling for all these railroad companies was communicated to these six different companies, or any of them, before the Simpson & Watkins collieries were actually purchased?

Mr. BAER. I do not know anything about it. I do not know with whom Mr. Watkins communicated.

Mr. SHEARN. Did not your communications with those companies lead you to believe that they were informed that that was one of the purposes?

Mr. BAER. I did not give it any consideration at the time—that is too vague to give a definite answer to. Mr. Watkins communicated it to me, and I have no doubt he communicated it to others, but I have no information I can testify from.

Mr. SHEARN. How soon after the purchase of the collieries did this matter of establishing a central sales department come up for consideration in the board of directors of the Temple Iron Company?

209 Mr. BAER. Immediately after. Mr. Watkins had outlined his scheme in writing and presented it to me, and I held it up and held it up, because, as representing the Reading Company, I was not at all satisfied with it. I did not believe it was a good scheme and it was never adopted. When it was not adopted, and the disposition was not to

go into it, Mr. Watkins said he did not see any reason why he should be any longer president of the Temple Iron Company, because the scope of its business was not enlarged as he wanted it enlarged. That is the whole story.

Mr. SHEARN. Or, as he expected it to be enlarged?

Mr. BAER. I think so. I think he went into the arrangement expecting that the Temple Iron Company would be a big coal-distributing company here in New York, and that a great deal of money would be made in that way.

Mr. SHEARN. Well, who were the directors of the Temple Iron Company at the time the vote was taken on this proposition to make it a general selling agency?

Mr. BAER. You will have to call for the minutes. I do not think it was ever voted on in the Temple Iron Company at all.

Mr. SHEARN. It came up for discussion, I understood you to say, immediately after the organization at a directors' meeting.

Mr. BAER. That I can not say. It came up for discussion, but whether it was at a directors' meeting or not I do not know. I discussed it with him. I do not recall. You can send for the minutes. They will probably disclose whether any action was taken or not. My impression is that the corporation never took any action, because those of us active in the management of the Temple Company—a few of us, myself leading; I was vice-president of the company—did not look with favor upon the scheme. My reason was very plain. My policy has been not to have commission houses selling coal, and in the Reading the very first thing I did when I took charge was to do away with commissions wherever I could and have our own agents sell the coal, and I am glad to say
210 I have reduced the selling expenses of the Reading Coal & Iron Company a very large sum of money—over two hundred thousand dollars a year—by doing away with those commissions. We were paying gentlemen commissions for selling coal and guaranteeing the sale, and I concluded in the ordinary organization of the coal & iron company, with agents located in New York, Boston, Chicago, Reading, Philadelphia, Baltimore, and all over the country, we could sell that coal at a less cost than it would cost us to sell it on commission, and therefore, from principle, the moment the matter came to me to pass upon one way or the other, or to advise about, I have been persistently and consistently opposed to commission houses and to selling coal on commission.

Mr. SHEARN. But, with all that enormous reduction in expense, you have not succeeded in lowering the price to consumers, have you?

Mr. BAER. No; because you and your friends have succeeded in getting up the cost of wages in this country by agitation so that the profits are less now than they were.

Mr. SHEARN. I am glad you give us credit for getting up the wages.

Mr. BAER. Oh, I think you are partly entitled to it.

Mr. SHEARN. Now, when this proposition was brought up before the board of directors of the Temple Iron Company, was there any discussion among the directors as to how the tonnage of the respective collieries of the Temple Iron Company should be carried by the respective companies?

Mr. BAER. How the tonnage?

Mr. SHEARN. Yes, sir; how the coal should be carried, in what proportions, and whether the coal should be diverted into any new channels, or remain in the same old channels.

Mr. BAER. It was generally understood that the transportation as it existed at the time of the transfer of the collieries should not be disturbed. There was nothing said that I recall, but that was the
211 understanding, that no new traffic arrangements should be made, and eventually the coal of the Temple Iron Company, by proper corporate action—they did make contracts——

Mr. SHEARN. Was not that one of the important reasons for some of these companies going into this scheme?

Mr. BAER. Certainly—to preserve their traffic.

Mr. SHEARN. To have it continue on the same lines as before?

Mr. BAER. Certainly.

Mr. SHEARN. And it has succeeded, has it not?

Mr. BAER. Yes, sir.

Mr. SHEARN. I observe that the mortgage authorized and the bond issue authorized for the Temple Iron Company was fifteen million dollars. Did you contemplate the acquisition of the remaining independent collieries in the Lackawanna region?

Mr. BAER. That provision was put in the mortgage because at the time there were three or four other collieries offered to us, and Mr. Watkins was very earnest in saying that Mr. Fuller's and Jermyn's collieries and several others—the names I do not recall, because I am not very familiar with that section of the State—should be bought, and it was not known what would be involved, and we therefore determined—and we do in all reorganizations—I do at least—to make the scheme large enough to cover any subsequent acquisitions we might see fit to make.

Mr. SHEARN. Have bonds enough to cover any emergency that might arise?

Mr. BAER. Yes, sir; so that we would not have to issue a second mortgage. The issue was limited to the amount required. There is a clause in the mortgage providing for the acquisition of new property. Additional bonds could be issued provided the property was brought under the mortgage.

Mr. SHEARN. Was it not part of the original scheme, as outlined to you by Simpson & Watkins and those familiar with it and promoting it, that the Temple Iron Company should acquire large holdings among the independent collieries in the Lackawanna region?

212 Mr. BAER. No; the scheme at the time involved the purchase of Mr. Fuller's and Mr. Jermyn's collieries, and one or two others, on which they had options.

Mr. SHEARN. That would not have used up more than six or seven millions of bonds?

Mr. BAER. I do not know how much it would use up. That is all that was contemplated at that time.

Mr. SHEARN. Did you not at that time have in view the acquisition of the independent collieries in that region and paying for them by these bonds and stocks?

Mr. BAER. No; I did not. On the other hand, I was the person that prevented the acquisition of any more than the Simpson & Watkins col-

lieries. I, representing the Reading Company—the Reading Company refused peremptorily to buy any more collieries and put in a clause—unless with the consent of the guaranteeing companies. The Fuller collieries and Jermyn collieries, and one or two others, whose name I do not know, they were anxious for us to take, I thought too dear. I recalled that I worked out a basis of so much a ton for the coal in the ground and I found that the amount asked for the other collieries exceeded by a great deal—probably one-third or one-half—the sums we were paying for the Simpson and Watkins collieries, and after the Simpson and Watkins collieries had been purchased, I advised, and earnestly advised, the executive committee of the Reading Company to decline to go forward in the purchase of any more collieries.

Mr. SHEARN. But, as you recollect it, there were only two or three other large colliery interests intended to acquire at the time of the purchase of Simpson and Watkins.

Mr. BAER. I think the Fuller and Jermyn are the only ones. I do not recall any others.

Mr. SHEARN. Did you draw these contracts—these Temple Iron Company contracts [exhibiting contracts]?

Mr. BAER. Which contracts?

Mr. SHEARN. These contracts [exhibiting.]

213 Mr. BAER. Show them to me. Do not ask me without showing them to me.

(The contracts were handed to witness.)

Mr. BAER. (After examining contracts) I do not think I did. I probably revised them. These are copies of what you got from the guarantee company?

Mr. SHEARN. Yes, sir.

Mr. BAER. Those contracts were drawn in Mr. Stetson's office. I probably dictated some part of it, and he dictated some part of it.

Mr. SHEARN. You are familiar with their terms, are you not?

Mr. BAER. I was at the time, and approved of them at the time.

Mr. SHEARN. Will you please look them over and state whether they are not copies of the contracts?

Mr. BAER. No; I will not. That is asking a gentleman to do something he can not do. I remember a judge of a court being called upon to testify to a paper, and when he went to testify I called his attention to something in connection with it, and he thanked me and said he had forgotten what it contained, and that he might have said something that was not true. If you ask me to say from recollection what is in a paper, it is not fair.

Mr. SHEARN. You recollect the leading and essential features of these contracts, do you not?

Mr. BAER. I will not testify about any written paper by recollection. I decline to do that.

Mr. SHEARN. Do you recollect that the preliminary contract between Simpson & Watkins and the Guarantee Trust Company, dated February 27, 1899, provided for the transfer to Simpson & Watkins by the Trust Company of trustees certificates for the capital stock of the Temple Iron Company to the amount of $2,250,000?

Mr. BAER. I decline to answer that because the paper is in existence and can be produced.

Mr. SHEARN. Will you produce it?

Mr. BAER. I will not.

214 Mr. CAMPBELL. I object. The grounds for the presentation of this evidence has been presented and notification made to the custodian, who, for the reasons set forth in the record has declined to produce it. I object to undertaking to prove the contents of the document in this way.

Mr. SHEARN. This contract, dated February 27, 1899, between the Temple Iron Company and the Guarantee Trust Company of New York, and the Lehigh Valley appears to have been executed by you as president of the Temple Iron Company. You have custody of that contract, have you not—the Temple Iron Company's original copy?

Mr. BAER. I have not. I suppose it is in the hands of the treasurer.

Mr. SHEARN. It is under your control?

Mr. BAER. Yes, sir; it is under my control if it is in the files of the Temple Iron Company.

Mr. SHEARN. You could produce it if you would?

Mr. BAER. I won't produce it unless I am ordered by the court to produce it.

Mr. SHEARN. You could produce it if you wished?

Mr. BAER. I will not produce it unless ordered by the court.

Mr. SHEARN. Could you produce it if you would?

Mr. BAER. I will not make any further answer to that question.

Mr. SHEARN. I ask the court to direct him to answer the question.

The CHAIRMAN. The contract is not here.

Mr. SHEARN. A copy of it is here. This court has power to order the production before it of any documents that it deems are important for the determination of the issues, and under your discretion so to do, I ask you to direct the witness to produce the contract.

The CHAIRMAN. That is precisely the question we have had up before.

Mr. SHEARN. It is in a different shape now. The Trust Company came in and objected because it was a trust company and there
215 were trust relations, confidential relations. I should be permitted, in the first place, to ask this question of Mr. Baer to show that, if he desired to do so, he could produce it, and then ask your h nors to direct the witness to produce it, and that is the purport of that question. I submit it is a proper one.

The CHAIRMAN. He does not put his refusal on the ground of inability.

Mr. SHEARN. I have not asked about his grounds. I asked if he could do it.

Mr. BAER. I will state to the Commission that if it was on file or in the custody of the company, and a proper order was made by the court, I would produce it. I do not know that it is there. I have not the physical custody of these papers, but if it is necessary to produce that paper I can make an order requiring my subordinate officer to do it.

Mr. SHEARN. This Commission has ordered the company to produce it.

Mr. BAER. It has not ordered me.

Mr. SHEARN. I want to know if you could produce it if you would?

Mr. BAER. I decline to make any other answer.

Mr. SHEARN. I ask the court to direct the witness to answer the question.

The CHAIRMAN. The contract is not here, and he has not been subpœnaed to produce it.

Mr. SHEARN. But I am going to ask him, if he answers this question in the affirmative, as he must—I am going to ask you to direct him to produce it.

The CHAIRMAN. He has said enough to satisfy me that he could produce it if he were willing to do so.

Mr. SHEARN. Well, he has not satisfied me. It seems to me his manner indicates very clearly that he will not.

Mr. BUDD. If the court please, this is a fundamental and preliminary question. Certainly, if he says he can not produce it, no other proceeding can be taken. If he says he can, we will ask for an order of this court directing him to produce it. It is not a laughing matter, although the witness seems to think so.

216 Mr. CAMPBELL. The circumstance is that the gentleman has testified positively that he is president of the Temple Iron Company and that the officers of the Temple Iron Co. have presumably a copy of that paper on file. That is a preliminary enquiry——

Mr. SHEARN. It does not answer from my point of view. Perhaps it does for Judge Campbell.

The CHAIRMAN. I do not know what more the witness could say. He is not an officer who ordinarily would have the contract in his actual custody. He says he is president of the company and could direct his subordinate officer who may have it to give it to him. To be perfectly clear, Mr. Baer could produce the contract.

Mr. SHEARN. Why should he not answer the question?

Mr. BAER. Because you asked if I could produce it and I had explained the way I could. I do not know whether it is on the files. I do not know whether the treasurer has it or who has it, but if it is in the custody of any subordinate officer and I am ordered by a competent court or this tribunal to produce it, I will produce it if it is in our office.

Mr. SHEARN. I do not find any fault with that if you will stand by it and will produce it when ordered by this Commission. Is there any doubt in your mind as to this contract being in the files of the Temple Iron Company?

Mr. BAER. I have no doubt in the world it is in the custody of some officer and in the files of the Temple Iron Company.

Mr. SHEARN. Now, I ask the court to direct Mr. Baer to produce the agreement dated February 27, 1899, between the Temple Iron Company and the Guarantee Trust Company and the Reading Company, and between the same companies and the Lehigh Valley Railroad Company, and between the same companies and the Delaware, Lackawanna & Western, and between the same companies and the Lehigh Valley, the New York, Susquehanna & Western, and the Reading Company.

Mr. CAMPBELL. And I object for the reasons set forth in the objections at the time the secretary of the Guarantee Trust Company was examined.

217 Mr. ROSS. On behalf of the Delaware, Lackawanna & Western, I also object for the reasons before stated.

Mr. BROWNELL. I enter the same objection on behalf of the Erie.

The CHAIRMAN. We are constrained to overrule the objections.

Mr. CAMPBELL. And in accordance with our previous action, I advise witness to decline to produce the papers until the question has been determined by the court.

Mr. SHEARN. He has already said he would comply with the order of this Commission.

Mr. ROSS. On behalf of the Delaware, Lackawanna & Western, I desire to request the witness to refuse to produce the documents referred to.

Mr. BAER. As instructed by counsel, I decline to produce them, waiving all question of the fact that they are not here, or anything of that kind.

Mr. SHEARN. What did you mean by telling the Commission you would produce them if ordered to do so by the Commission?

Mr. BAER. Personally, I am here as a witness. I am not trying this case, and when counsel who represent me or represent the companies I represent and other parties in the case instruct me as a witness not to produce the paper, I am bound to obey instructions, or else go down and take charge of the trial of the case. I can not be a party, a witness, and counsel altogether. I am compelled to be reasonable and take the advice of counsel, upon whom the responsibility rests, and you must not assume that because I was a lawyer that I dare override my counsel and the counsel of the other people here.

Mr. SHEARN. They are acting under your instructions, are they not?

Mr. BAER. They are representing me just as counsel represent people. They are not representing me personally. They are the attorneys for the different defendants you have summoned here before the court, and they are here charged with the responsibility of trying this case.

218 If they blunder, I suppose my companies will be ultimately responsible for it, but I will not be personally responsible.

* * * * * * *

Mr. SHEARN. Has the Reading Company, since April 10, 1899, paid the Temple Iron Company twelve and a half cents a ton on every ton of coal transported over its line?

Mr. CAMPBELL. I object to that question as immaterial; as having no bearing upon the questions pending here before your honors under the act to regulate commerce. It is immaterial for all the reasons hitherto set forth regarding the private business relations of these companies which are buying, shipping, and mining coal?

The CHAIRMAN. We overrule those objections and the witness may answer.

Mr. BAER. No; they didn't transport any.

Mr. SHEARN. Has the Central Railroad of New Jersey paid to the Guaranty Trust Company of New York the sum of twelve and a half cents a ton upon the production of the mines of the Temple Iron Company transported over its line as the initial line since that date?

Mr. CAMPBELL. The same objection.

The CHAIRMAN. And the same ruling.

Mr. BAER. Allow me to answer those questions generally. So far as I know, as president of the Temple Iron Company, all the guarantee companies have paid all sums which the Guaranty Trust Company has required them to pay under the form of the guarantee, and a number of payments have been made, the amount of which and the details of which

I do not recollect; but the fact is, generally, that they have recognized the obligation of their guarantee and have paid in accordance therewith. Does that answer your question?

Mr. SHEARN. It does not, because we have not the contract in evidence now. Now, I ask the stenographer to read the question to you and ask you to answer it.

Mr. BAER. I ask the Commission whether I have not answered the question in substance?

219 Mr. SHEARN. Has the Central Railroad Company of New Jersey, since April 10th, 1899, paid to the Guaranty Trust Company the sum of twelve and a half cents a ton on every ton of coal from the mines of the Temple Iron Company carried over the Central Railroad Company of New Jersey as the initial line?

Mr. CAMPBELL. The same objection.

Mr. BAER. I answer that, no; that all that the Central Railroad Company of New Jersey has paid has been on the deficit in the amount required to be paid, the interest, and the dividends which the Guarantee Company, trustee, has asked them to pay, but the amount and how much it was I can not tell without reference to the books.

Mr. SHEARN. Does it amount to as much as twelve and a half cents on every ton mined from the mines of that company and transported over that line as the initial line?

Mr. BAER. Oh, no. I will explain that these are only advances made to pay interest and dividends arising under the exceptional conditions of strikes; that the Temple Company, in my judgment, is entirely solvent and can repay all sums advanced to it by the guarantors, beyond question.

Mr. SHEARN. Has the Central Railroad Company of New Jersey, since April, 1899, been penalized by having any of the traffic from the lines of the Temple Iron Company ordinarily passing over its lines withdrawn from it.

Mr. BAER. That I can not tell.

Mr. SHEARN. You would know if it was a fact, would you not?

Mr. BAER. We are not the initial line there. I can't tell you that. You will have to go to the traffic department, I suppose. I can not tell. I would say no, when you use the word "penalized." I do not know how much of the traffic—what I mean is this: I can not now say whether the Central Railroad of New Jersey enjoys exactly the same tonnage from the collieries that it did in 1899, nor do I recall how much of that tonnage it does receive, because my present recollection is that the Central of New Jersey is not the initial line; that it comes to it through other lines. The traffic department could answer that.

220 Mr. SHEARN. As president of the Temple Iron Co. and a member of its board of directors, do you know whether any of the railroad companies who are parties to the Temple Iron Co. agreement have had any part of the traffic ordinarily incident to their lines as initial lines withdrawn from them by reason of their offering to carry out any of the provisions of the Temple Iron Company contracts?

Mr. BAER. Well, in general I would say they have not; but there is a dispute about the taking of some coal from one of the collieries, and there was litigation with the Ontario & Western. The Ontario & Western

claimed to have a contract by which they were entitled to the coal from one of the collieries, or to a part of it, and under the ruling of our supreme court in the Bald Eagle Valley vs. The Littany Valley, they held that the railroads had a right to make special contracts with owners of mines and factories along their lines to secure traffic and that an injunction would lie to prevent the diversion of that traffic to another new railroad about to be built. I advised the adjustment of that litigation about a year after the Temple Company was organized, and urged an adjustment by which the Ontario & Western got the traffic. Is that right?

Mr. KERR. Yes, sir.

Mr. BAER. We had filed a bill and had the usual fight about it and the matter came to me. I looked up the case and I concluded that it had a right to that traffic and it was given to the Ontario & Western.

Mr. SHEARN. Did that come up before the board of directors of the Temple Iron Company?

Mr. BAER. No, I do not recall that. Mr. Watkins was president at that time and they got into the litigation with him, and when I came to look into the question preliminary injunction had been granted against us and I advised the adjustment with the Ontario & Western, and I think I personally took it up with Mr. Fowler and Mr. Kerr, and no doubt reported it to the board and had its approval.

221 Mr. SHEARN. Is that the only case you recollect since April 10, 1899, where by virtue of a vote of the board of directors or any action authorized by the board of directors of the Temple Iron Company tonnage has been diverted from any of the lines of railroad party to this Temple Iron Company agreement by reason of failure to carry out any of the terms of the Temple Iron Company agreements?

Mr. BAER. I don't know anything of that kind; no.

Mr. SHEARN. You don't know of any such case?

Mr. BAER. No, sir; I do not know of any such.

Mr. SHEARN. You would know if there were such, would you not?

Mr. BAER. I think I would.

Mr. SHEARN. Then there are none.

Mr. BAER. I have not heard of them.

Mr. SHEARN. Who owns the capital stock of the Temple Iron Company?

The CHAIRMAN. I don't want to misunderstand any of this. The contract is not in. You have a copy of it. As I understand, as it has been described for failure to respond when called upon to do so, the traffic might be diverted. The real question is: Did any of them fail to respond?

Mr. BAER. Everybody has carried out in good faith their guarantee.

Mr. SHEARN. Who owns the stock of the Temple Iron Company?

Mr. BAER. The stock of the Temple Iron Co.?

Mr. SHEARN. The capital stock; the share stock?

Mr. BAER. The capital stock of the Temple Iron Co. is scattered far and wide over the United States.

Mr. SHEARN. Is not all the capital stock of the Temple Iron Company owned by the Guaranty Trust Co. of New York as trustee?

Mr. BAER. The stock is pooled and the Guaranty Trust Co. issues certificates of stock as we do in the Reading Company. The stock of

the Temple Company was deposited with the Guaranty Trust Co.
222 of New York under a voting trust, and that issued voting trust certificates, and those certificates are scattered far and wide over this country. A great many of them are held in New England. The last time I looked at the books there were three or four hundred stockholders; that is, holders of voting trust certificates.

Mr. SHEARN. Certificates of beneficial interest?

Mr. BAER. Yes; you understand what I mean—the kind of thing the Reading issues, or a trustee issues where there is a voting trust.

Mr. SHEARN. Then the share stock of the Temple Iron Company is all held by the Guaranty Trust Co. of New York as trustee, and upon that issues certificates of beneficial interest in the share stock of the Temple Iron Co.?

Mr. BAER. Yes, sir.

Mr. SHEARN. Now, who votes the stock of the Temple Iron Company? The Guaranty Trust Co.?

Mr. BAER. The Guaranty Trust Company; they give a proxy. Since I am president they give me a proxy to vote their stock.

Com'r PROUTY. Are they subject to any control in that matter?

Mr. BAER. No, sir.

Mr. SHEARN. The Guaranty Trust Company have the absolute right to vote the stock?

Mr. BAER. Yes, sir.

Mr. SHEARN. Do you know who instructs them how they shall vote the stock? Does not that come from the railroad companies that are parties to this guarantee agreement?

Mr. BAER. It does not.

Mr. SHEARN. Who are the directors of the Temple Iron Company?

Mr. BAER. They are Mr. Smink, Mr. Broden, Mr. Geo. B. Conard, Mr. Joseph S. Harris, Mr. Truesdale, Mr. E. B. Thomas, Mr. Underwood, and myself, I think.

Mr. CAMPBELL. There is no reason for putting this in the record. It is all in the examination of Mr. Baer, last Friday, I think.

223 Mr. SHEARN. Was Mr. R. M. Olyphant, president of the Delaware & Western, a director in 1902?

Mr. BAER. Mr. Olyphant was a director for a short time.

Mr. SHEARN. Do you recollect when he became a director?

Mr. BAER. No; I do not. I recollect asking him to come into the board and he was in a short time and then resigned.

Mr. SHEARN. Do you recollect when he resigned?

Mr. BAER. I do not; probably a year ago.

Mr. SHEARN. Why did you ask him to become a director?

Mr. BAER. I wanted his advice, and the Delaware & Hudson got some traffic from these mines; they got part of the transportation, directly or indirectly, and I wanted his advice in the mangement of the company. He is the most experienced coal man in point of years, and I think in ability, in the city of New York.

Mr. SHEARN. Was Mr. Irving A. Stearns, the president of the Delaware, Susquehanna & Schuylkill, member of the board of directors?

Mr. BAER. Yes, sir; Stearns was a director. I am not sure he is a director now. He was a director. We have had an election lately—in

March of this year and I sent a proxy up and I think Stearns is a director yet. He was a director.

Mr. SHEARN. Did he become a director at your request also?

Mr. BAER. I think he did, originally.

Mr. SHEARN. For the same reason that Mr. Olyphant was asked to become a director?

Mr. BAER. Mr. Stearns is a very competent mining engineer and mine manager.

Mr. SHEARN. Where are the meetings of the board of directors of the Temple Iron Co. held?

Mr. BAER. In Reading, and sometimes in New York, and sometimes in Philadelphia. The general office is in Reading.

224 Mr. SHEARN. Are they not most often held in the city of New York?

Mr. BAER. I suppose most of the time they are held here.

Mr. SHEARN. How often do the board of directors meet?

Mr. BAER. Of the Temple Iron Co.?

Mr. SHEARN. Yes, sir.

Mr. BAER. Well, theoretically, once a month; but actually about once in three months I should say.

Mr. SHEARN. They met oftener than that during the strike, didn't they?

Mr. BAER. No. I suppose we met every two months during the strike when something had to be done by the Temple Company officially in connection with some matter pertaining to the strike. You can get the months.

Mr. SHEARN. Does the board of directors of the Temple Iron Company control and direct the policy of the subsidiary companies of the Temple Iron Co.?

Mr. BAER. Well, there is not much direction about it. We got competent managers and officers and put them in charge of the mines up at Scranton, and the only policy about it is to mine all the coal they can and as cheaply as they can.

Mr. SHEARN. When it has coal for sale, who decides what the coal shall be sold for and how much shall be mined?

Mr. BAER. We sell by contract.

Mr. SHEARN. Does the Temple Iron Company's output—is it sold under contracts providing for payment on the basis of 65 per cent of the tidewater price?

Mr. BAER. I won't tell you what the contracts contain. I will say that the Temple Iron Co. sells its coal to coal companies and is not a retailer of coal in the market.

Mr. SHEARN. Is the business of the Temple Iron Co. controlled by and managed by the board of directors of the Temple Iron Co.?

Mr. BAER. Why, yes; certainly.

Mr. SHEARN. Then it is not managed in this wise, is it, that
225 all of the coal mined by the several subsidiary corporations of the Temple Iron Company is under the direct management and control of the board of directors of the said corporations severally?

Mr. BAER. Yes, sir; that is right.

Mr. SHEARN. That is what I want to know—whether each of the separate companies or collieries included in the Temple Iron Company's scheme are controlled by separate boards of directors, or by the general board of directors of the Temple Iron Company?

Mr. BAER. They have separate boards of directors. They are managed all from Scranton. They have their boards and some of us are in them. I do not know who the directors of those subsidiary companies are. I can get them.

Mr. SHEARN. As a matter of fact, the policy of those companies is really controlled and directed by the board of directors of the Temple Iron Co.?

Mr. BAER. Unquestionably; there is no question about that.

Mr. SHEARN. Where, in the city of New York, does the board of directors of the Temple Iron Company have its meetings?

Mr. BAER. At my office—the president's office of the Central of New Jersey Railroad, generally. Sometimes they meet at other places, but very rarely. As a rule there is where we meet.

Mr. SHEARN. You had a meeting in March of this year, did you not?

Mr. BAER. Yes, sir; we had a meeting to organize the board after the stockholders' meeting.

Mr. SHEARN. The last meeting of the board of directors of the Temple Iron Company preceded, did it not, the issuing of the Reading's price circular for April, 1903?

Mr. BAER. Indeed, I don't know.

Mr. SHEARN. It was prior to April 1st, 1903, that you had the last meeting, was it not?

Mr. BAER. I don't know when it was.

Mr. SHEARN. I understood you to say there was a meeting in March?

226 Mr. BAER. I probably did say so. Let me get my diary and see. [After consulting diary.] We organized the 24th day of March—Tuesday the 24th day of March in New York; Temple Iron Company meeting. That is the day.

Mr. SHEARN. At that meeting do you recollect who was present?

Mr. BAER. No.

Mr. SHEARN. Well, was Mr. Thomas present?

Mr. BAER. When you say do I recollect who was present, I don't mean that I cannot recollect some who were present, and I will proceed to name them; I think Mr. Thomas was there and Mr. Truesdale was there. Mr. Harris was there and myself; I think they were all.

Mr. SHEARN. What discussion took place as to what price should be charged for coal at tidewater?

Mr. BAER. None whatever.

Mr. SHEARN. Was that not referred to?

Mr. BAER. It never was referred to and never is referred to in the Temple Iron Company meetings.

Mr. SHEARN. After the adjournment of the Temple Iron Company meetings while you were all there, what was said about the prices to be charged?

Mr. BAER. Nothing; not a word was said about the price of coal after the adjournment.

Mr. SHEARN. Or before the meeting took place?

Mr. BAER. Nor before the meeting took place.

Mr. SHEARN. What is there about the business of the Temple Iron Company that requires the attendance of the presidents of these several railroads at your office for periods of two and three hours at each meeting?

Mr. BAER. There is nothing in the business of the Temple Iron Co. that requires them and there are no such meetings at my office of the Temple Iron Company. The Commission will understand that for a period of time during this strike we have had frequent conferences in relation to these momentous questions that we all had under consideration, and it was customary for the coal presidents here in New York to come
227 to my office on Tuesday by invitation to lunch with me, and we have there discussed all the questions bearing upon the strike and the question of what we were to do to end it, and everything in relation to it. That has been going on for a year, and I have no doubt that fact has led to the belief that they were meetings of the Temple Iron Company. Sometimes there were meetings of the Temple Iron Company to transact the ordinary business of the Temple Iron Company. It has a large business and it requires a great deal of attention. I get reports of the corporations and have to submit them. They are the ordinary and regular meetings of a corporation engaged in business, and since I have been president of the railroad, because the strike began immediately afterwards, there have been numerous conferences in my office at times sometimes—generally at my office. We have also held them in Mr. Thomas's office. Nearly every gentleman has furnished a lunch at some time where we got together and discussed these questions in which we all had a common interest.

Mr. SHEARN. Questions about the strike?

Mr. BAER. Questions about the strike, which were the only questions which have really occupied the attention of the coal presidents for a very long while.

Mr. SHEARN. Don't you get together and discuss the question of output and price?

Mr. BAER. No, not output or price. I have never been at a meeting where the question of output or price was discussed. I have met Mr. Thomas and Mr. Walter occasionally and I have asked them about the trade and what he thought the output of a given month would be, and what the market would probably take in a given month; but there never has been a meeting since I have been president of the Reading or Central of New Jersey between the presidents of the railroads or coal companies when the question of output or price has been discussed in the sense of wanting to fix a price. They have criticised me casually at times about the price I fixed and there has been talk about what
228 the price of the coal was in the market. What I mean by that is casual talk of men meeting together and discussing a common business, but there was no agreement or no arrangement and no conclusion or anything which can be directly or indirectly construed to be a fixing of price or fixing of the output during my administration.

Mr. SHEARN. Where did these casual meetings take place?

Mr. BAER. Oh, well, they take place sometimes down at the Lawyer's Club. They have a fascinating place down here—a downtown club.

We meet very frequently, probably every two or three weeks, two or more of us meet in one way or another. Do you want to know what we dine on, too?

Mr. SHEARN. I guess you dine on the fat of the land, probably. I won't go into details, but are those the meetings, do you know, that are spoken of in the answer of the Philadelphia & Reading Coal & Iron Company submitted to the Attorney-General?

Mr. BAER. Show me the answer and I will see what it is.

Mr. SHEARN (continuing). Wherein they are referred to as meetings for exchanging and considering of statistical information and data as to the state of supply and available demands of future markets in order that measures may be taken to supply their requirements?

Mr. BAER. We often discuss that. We have had discussions as to what the future of the anthracite market would be. Some of us supposed that when the strike was over that the demand for anthracite coal would be very great, and that the capacity of the mines would not be equal to producing, and all that sort of conversation. That is natural to men. Lawyers, when they get together, discuss cases, don't they?

Mr. CAMPBELL. I hope the witness will insist on having the paper which the gentleman is examining him from. It refers to a meeting which took place in times past, of the coal-sales agents, and has no relation to what he is examining the witness about.

229 Mr. BAER. I have no objection to saying——

Mr. SHEARN. To saying what?

Mr. BAER. To saying that when I meet Mr. Thomas or Mr. Truesdale at times I may talk about coal to them or the amount of business he is doing, or I may talk about many other matters; but what I do say emphatically is, that there has been no pool, combination, or agreement between any of the coal presidents or the railroad presidents connected with the coal companies since I am president of the Philadelphia & Reading Railroad Company, either relating to output or to price.

Mr. SHEARN. In other words, you have never gotten together at any time and tried to put up the price of coal?

Mr. BAER. That is it exactly.

Mr. SHEARN. Do you recollect having an interview with Mr. Carroll D. Wright in November, 1902?

Mr. BAER. Yes, sir.

Mr. SHEARN. Will you look at the marked page 1204 of the Bulletin of the Department of Labor that I hand you [handing to witness]?

Mr. BAER. What do you want me to look at?

Mr. SHEARN. Where it is marked in the margin.

Mr. BAER. (After reading marked portion of page.) That is all true, sir.

Mr. SHEARN. You said that to Mr. Wright, did you?

Mr. BAER. Yes, sir.

Mr. SHEARN. I will read it in evidence.

Mr. GOWEN. I object to the extract; let it all go in. I object to a portion of the interview going in.

The CHAIRMAN. Your question is as to some interview between Mr. Baer and Mr. Carroll D. Wright?

Mr. SHEARN. Yes, sir; when he made a statement to Mr. Wright.

The CHAIRMAN. You produce a statement which he identifies, and now you offer that statement?

Mr. GOWEN. He offers a portion only.

Mr. SHEARN. I am going to read a certain part of it, and ask that it go in evidence.

230 Mr. GOWEN. We want all upon that subject, if this Commission please.

The CHAIRMAN. Of course the other side can put the rest of it in.

Mr. SHEARN. Did you say as follows, referring to the preceding strike, that:

"Shortly after this strike was inaugurated Senator Hanna met a number of gentlemen and insisted that if the strike were not settled it would extend to Ohio, Indiana, and Illinois, and the election of Mr. Kinley and Mr. Roosevelt would be endangered. He insisted that he was authorized to settle the strike, through Mr. Mitchell, if the operators would agree to a ten per cent advance in wages. After a great deal of pressure had been brought to bear upon the presidents of the coal companies and positive assurances were given that the situation was really dangerous, President McKinley, sending to me personally a gentleman to assure me that Ohio and Indiana were in danger unless some adjustment was made, we agreed to put up a notice which was prepared, as we understood, at Indianapolis and furnished by the United Mine Workers. The private operators absolutely refused to join in this advance, and instead of the strike being ended, as promised, it continued on for some time, and it became necessary, in order to relieve the situation, to call a meeting of the private operators with the presidents of the coal companies and to agree with them that if they would put up notices to pay 10 per cent increase we would meet a committee which they should appoint and endeavor to increase, if possible, the price of coal. They agreed to this; a committee was appointed by the private operators, and we sat two or three days a month for three months to reach an agreement with them. That agreement involved a heavy compensation to the private operators from the coal companies. The coal companies had agreed to change the basis of coal purchased from the private operators from a basis of 40 per cent and 60 per cent, to a basis of 35 per cent and 65 per cent.

231 In other words, we had to decrease 5 per cent and they increased 5 per cent."

You stated that to Mr. Wright?

Mr. BAER. I did, I assume; it sounds all right—if you have read it correctly.

Mr. SHEARN. That is the fact, is it not, anyway?

Mr. BAER. Yes, sir; it is the fact.

Mr. SHEARN. Now, the increase of price that you agreed to try to bring about between you was, I suppose, the price of coal to the independent mine owner, not to the price to the consumer? What price were you referring to that you would attempt to put up—the retail price of coal or the price to the operator?

Mr. BAER. It says exactly that it was to the independent operators who were selling their coal. Instead of selling it on the basis of 60 per cent f. o. b. New York, they were to get 65 per cent?

Mr. SHEARN. So that referred, of course, to the price of their coal sold to your coal companies?

Mr. BAER. Yes, sir.

Mr. SHEARN. Where were those conferences held?

Mr. BAER. In Philadelphia.

Mr. SHEARN. Do you recollect who the committee representing the operators consisted of?

Mr. BAER. Why, Congressman Connell——

Mr. SHEARN. Mr. Kemmerer was——

Mr. BAER. Just wait until I get the whole thing back in my mind—Doctor Howe and Mr. Kemmerer. I think they were the only three.

Mr. SHEARN. You had several conferences at which they made representations to you and there was much discussion pro and con?

Mr. BAER. Oh, yes.

Mr. SHEARN. Was Mr. Truesdale present at the conferences?

Mr. BAER. Well, at one or two he was, I think.

Mr. SHEARN. Was Mr. Garrett present?

Mr. BAER. Mr. Garrett was present at most of them.

Mr. SHEARN. Who else was present from the railroad companies or from the coal companies?

232 Mr. BAER. Why, Mr. Cumming.

Mr. SHEARN. Of the Erie?

Mr. BAER. Of the Erie—Mr. Cumming, of the Erie, Mr. Garrett, and myself were the three there most of the time, and at times I recall Truesdale being there, once or twice.

Mr. SHEARN. You came to an agreement, didn't you?

Mr. BAER. Came to an agreement?

Mr. SHEARN. Yes, sir.

Mr. BAER. No; we did not come to an agreement. We suggested a plan to the coal companies and the operators based upon the 65 per cent contract and suggested—we outlined a plan and suggested that the companies on that basis, the coal companies, should make contracts with their private operators, or such of them as were willing to enter into contracts.

Mr. SHEARN. You had a draft form of agreement there, didn't you?

Mr. BAER. The form of agreement was revised and revised at every meeting.

Mr. SHEARN. And finally you and the committee came to a tentative agreement upon the contents of the proposed contract, didn't you, as stated in this report I have read to you?

Mr. BAER. An agreement was reached by the committee by we persons agreeing to recommend to the private operators and the coal companies the making of contracts on this basis. There was no agreement about it. We had no power to make an agreement.

Mr. SHEARN. When you got through with your last conference the gentlemen representing the coal companies had come to an understanding as to what form of contract you were willing to enter into, had you not?

Mr. BAER. No; there was no agreement about it one way or another. The committee was acting representing all parties, and we recommended, as I recall it now, to the coal companies and to the individual operators the making of contracts on that basis. The form was a general form

233 that would not suit all conditions, you see, and it was simply the basis of a contract in its general terms as to the 65 per cent and as to the terms of payment, and the great fight we had, as I recall it, was on the proportion of coal and on the sizes of coal. Some of the

private operators insisted upon changing the sizes of coal, and a good many of them wrote long letters to us insisting that what we called the inspection of the coal, by which the slate and the foreign matter is eliminated, was too rigid, and wanting an allowance of a larger percentage of slate—details of that kind.

Mr. SHEARN. The essential thing that was under consideration was the increase of the price from 60 to 65 per cent of the tide-water price on prepared sizes?

Mr. BAER. You may say that was the essential, that the price is the essential thing, but the real essential thing in fixing that basis was to have the contract clearly define the character of the coal. Anthracite coal can be mined so full of foreign matter and slate that its merchantable quality very much depreciates, and the standard we had established as the basis of purchase was the source of long and protracted talk; it took up five times as much time as anything else, as you will see by the details in the contract. The object of the coal companies, being the purchasing company, was to get clean, merchantable coal and also to get a clear definition of the sizes of the coal.

Mr. SHEARN. And the object of the operator was to get an increased price?

Mr. BAER. To get the increased price and have as low an inspection as possible, which affected the quality of the coal.

Mr. SHEARN. Before these conferences had terminated you gentlemen representing the railroads had——

Mr. BAER. Not representing the railroads.

Mr. SHEARN. representing the coal companies had come to the conclusion that you were willing to pay 65 per cent of the tide-water price?

Mr. BAER. Yes, sir.

Mr. SHEARN. And you so announced that to the committee, did you not?

234 Mr. BAER. Yes, sir.

Mr. SHEARN. Does that 65 per cent mean 65 per cent of the price of each man's coal at tide water, or 65 per cent of the general price for all coal, of the same grade, sold during a given month at tide water?

Mr. BAER. I will have to refer you to the contract. I really can not carry those details in my mind. There is a specific provision in the contract relating to that, I am sure, but I can not recall it from recollection.

Com'r PROUTY. Do you know, as a matter of fact, how that is got at?

Mr. BAER. My recollection of that is this: That the f. o. b. price of white ash coal—you see there are so many kinds of coal that we have to take a standard coal. It is taken in New York, the f. o. b. price in New York, and all the coal of that particular region, the white ash coal, is taken to make the common basis of payment. For example, the Schuylkill region, or the shippers from the Schuylkill region, bring white ash f. o. b. New York. That has to be the basis of payment, say in the Wyoming region, of what other coals bring. These coals all differ in quality.

Com'r PROUTY. You put all on the same basis of the same quality of coal?

Mr. BAER. Yes, sir; to get at a common basis for the same quality coal and that is done by a statistician, Mr. Ruley, who gets the prices, and the operators have a right to call on the coal companies to send in a state-

ment of the prices at which they have sold all this coal, and then he makes up a statement and ascertains the average price. We never look beyond that. We think he is perfectly competent.

Com'r PROUTY. You say the coal companies send to him a detailed statement of coal and the prices on what they have sold?

Mr. BAER. Yes, sir.

Mr. SHEARN. The various companies employ Mr. Ruley to get these figures up for them?

Mr. BAER. Mr. Ruley is a statistician and gets up all kinds of
235 figures for us in relation to the coal trade. We report to him everything about the business, where we sell the coal, and all that, so that he prepares for us statements—how much coal has been sold in Brooklyn, and who sold it, and what prices it brought, and he gives monthly statements—statements of how much coal each of the companies transported to market.

The CHAIRMAN. And how much each one sold of a given grade?

Mr. BAER. Yes, sir; all different grades.

The CHAIRMAN. Is that the basis on which the settlement is made?

Mr. BAER. No; the payment is made on domestic—there are different kinds. Sixty-five per cent is not the whole of the story. That is on domestic sizes.

Mr. SHEARN. Prepared sizes?

Mr. BAER. The other sizes call for a different payment, which I do not remember; that differs. The contracts are not uniform on that.

Mr. SHEARN. But as to the 65 per cent payment?

Mr. BAER. As to the 65 per cent, on what we call prepared sizes, I think the contracts are uniform on that; but they are not as to the smaller sizes of coal.

Mr. SHEARN. We are speaking of prepared sizes. I should come to the conclusion, from what you have said, that the statement is made for prepared sizes on 65 per cent of the general average price prevailing during the month on the sales made; not 65 per cent of the price that each individual operator's coal is actually sold for.

Mr. BAER. The general market price for that particular kind of coal at a particular market, as I recollect it.

Mr. SHEARN. You are unable to differentiate between the individual miner's coal and your own coal? It all goes into a common supply, does it not, and is sold?

Mr. BAER. That is the reason of it. The advantage we have, the great advantage to us, is that we can take the coal from all these private operators and have it consigned with our coal. It saves us a great deal
of cost and trouble in keeping the coal separate and selling on each
236 man's account. It becomes a part of our coal that we purchase and we give him the average price we obtain for that coal.

The CHAIRMAN. That seems to dispose of the question, Mr. Shearn.

Mr. SHEARN. After that report was made, how generally did the operators along the line of the Reading and the Central Railroad Company of New Jersey enter into those contracts with those companies?

Mr. BAER. Well, they were very slow. Some of them entered into the contracts and some of them have not entered into them. There were applications only the other day. Some stayed out and some came in,

but some came in in the spring and others stayed out for six months and a year, and quite a number are out yet. It didn't meet with general favor. The majority accepted the contract, but a great many did not.

Mr. SHEARN. Have you any idea as to the output of the mines that accepted the contract on the lines of the Central Railroad of New Jersey and the Reading?

Mr. BAER. No, I have not; I will say as to the general idea, that I have given you that.

Com'r PROUTY. It was stated that it could be computed from the report there.

Mr. BAER. The purchases were 1,034,000 tons for the Reading Coal & Iron Company in our last report, and I stated that it ran from nine hundred thousand to eleven hundred thousand tons.

Mr. SHEARN. That means purchased under these 65 per cent purchase contracts?

Mr. BAER. Yes, sir.

Mr. SHEARN. That is all there is about that. Who fixes the price of the coal sold by the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. It is fixed by the executive committee. The general manager gets up a circular of what he thinks the price of coal ought to be, and then that is submitted to me and I discuss it with him and go over it with great care, and then generally we have an executive com-
237 mittee meeting every Friday, and either formally or informally the executive committee passes upon it. I say informally, because Mr. Harris and Mr. Welsh, the two old receivers of the Reading Railroad system—Mr. Harris being an expert coal engineer and president of the coal company and of the Lehigh Navigation Company—are with me every day. They have come to the office and take lunch with me and the executive committee, together with Mr. Steele, who has never been there for a year, and we discuss these things informally or formally. If it happens to be on Friday that the question comes up, we may have a formal meeting of the executive committee, but if it comes up Monday when these gentlemen come up to lunch I would probably talk over with them what the circular price of coal is going to be.

Mr. SHEARN. The general manager, is that Mr. Richards?

Mr. BAER. No, sir; Mr. Henderson.

Mr. SHEARN. Who fixes the price of the coal of the Lehigh & Wilkes-Barre Coal Company?

Mr. BAER. That is fixed by me in the same way after consultation with Mr. Richards, the general manager of the Lehigh & Wilkes-Barre Coal Company, and at times with Mr. Heilner, who is our sales agent in New York, but generally with Mr. Richards, who is general superintendent of the Lehigh & Wilkes-Barre Coal Company, who comes regularly to Philadelphia on every Friday and spends three or four hours there with me going over the business of that company.

Mr. SHEARN. You say very emphatically that the price is not fixed as the result of any conference with Mr. Thomas or Mr. Truesdale?

Mr. BAER. It never has been, Mr. Shearn, in my day. I have not only not fixed the price, but I have stood out against any discussion of the price with those people, because I knew the clamor of this question of combination, and I have as a lawyer been careful throughout my

administration not to cross what I consider the line of doubt on that subject. I have not permitted anybody to even dominate on this
238 question of the price of coal. When I fixed the price of coal for our company, after it had been fixed and the circular was out I was hammered roundly by some of the other people, they saying that I had arbitrarily fixed the price, and they had to meet it when they fixed the prices—some of them; I am not going to name them; they can testify themselves. The only discussion I had with Mr. Thomas was that he complained to me that my low price in Chicago and Buffalo was interfering with their price, so that they could not get a higher price than I was getting, and it was not fair and right that I should be selling coal at such a low figure. That is the only time that Mr. Thomas and I had discussed the question.

Mr. SHEARN. What did you do after he spoke to you about it?

Mr. BAER. I maintained the price I had fixed, and he was compelled, as his price was higher, he was compelled to lower his price, and as he told me he would lose a lot of money that he could have made.

Mr. SHEARN. Didn't you have fixed the price of coal by agreement with Mr. Thomas and Mr. Truesdale when company coal was sold lower than the market price in New York in January and February of this year?

Mr. BAER. No, sir. I fixed that price myself without consultation with anybody. I thought that we were the strongest people, and I made up my mind that without regard to what any of the other companies would do I would do what I did do, fix a price and compel the retail dealers to abide by it. I have stated to the public several times all the facts connected with that. I not only fixed a price but to protect the public I gave notice to all the parties who bought coal from us that if they undertook to sell that coal at retail for a higher price than the one at which we sold it plus their fair commission and expense of handling it, we would not deliver coal to them, and several of the retail dealers threatened to bring suit because they said I had no right arbitrarily—and I admit it was arbitrary to say to a dealer, "We won't, if
239 you sell that coal for a higher figure than we think is just, we won't sell coal to you." But the circumstances and demand decided (required [?]) perhaps arbitrary action, and I took the responsibility without consulting with anybody with the exception of Mr. Harris and Mr. Welsh, and there was a great deal of doubt in their minds at first, at the first suggestion that I made to them of it, of my ability to carry it out I fought it through.

Mr. SHEARN. You and Mr. Thomas and Mr. Truesdale between you have the power to fix an arbitrary price on coal at tidewater, have you not?

Mr. BAER. No, we have not. Only, like everything else, coal is a commodity the price of which is controlled by demand and supply. The competition of bituminous coal is so great and the competition between the companies themselves is so great that no one could fix an arbitrary price on coal, and my theory of fixing the price of coal is simply that you take the cost of production, a fair transaction (transportation [?]) and a fair profit, and up to this time in all the history of the Reading Railroad it has not been able to make money because of the low return

it gets from its coal. It has not paid dividends, with the exception of the last few years, on twenty-eight millions of stock; it has not been able either through the coal & iron company or the railway company to make enough money to give its stockholders a fair return, and the same is true of the Lehigh Valley. Now, if we undertook to put the price of anthracite coal higher, its consumption would diminish; we could not do it. Bituminous coal is a sharp competitor with us. It forces us to sell certain—forty per cent. of anthracite coal is sold all the time in market below the cost of production, Mr. Shearn.

Mr. SHEARN. But you have put the price fifty cents over this time last year.

Mr. BAER. We have put the price of fifty cents because the cost of it has gone up in all directions. We could not increase (decrease [?]) wages. You see by our reports that we have made no money. Do you think the cost of producing a thing can be advanced and the cost to the public be reduced? If you turn to these reports you will see that
240 the cost of producing anthracite on every ton has gone up within the last three years over 30 cents in our company. Now, that don't mean 30 cents on prepared sizes, but it means 30 cents on the total output of coal, which includes all the small sizes of coal as well as the large. We could not without increasing that cost to the public, the cost of coal to the public, we could not go on without reducing our companies to bankruptcy.

Mr. SHEARN. How much of an increase in your revenues is there as the result of increasing the price of coal fifty cents a ton?

Mr. BAER. How much?

Mr. SHEARN. Yes.

Mr. BAER. I can not tell you that until the end of the year. The result I can not give you. Until the accounts are made up I would not be able to say, because they are mixed up with expenses of the strike and enormous expenses connected with getting the colliers into condition after the strike, so that I can not tell you, but I will tell you one thing, that we won't end the year with a profit big enough to pay dividends on our stock.

Mr. SHEARN. Well, is that because coal is too low or because your stock is too high?

Mr. BAER. The stock of the Reading system to-day represents less than the actual values of the Reading properties.

Mr. SHEARN. That is, including the coal properties?

Mr. BAER. I am speaking of the Reading system, including the coal property and everything we have. That property to-day could not be reproduced at fifty per cent greater cost; through a process of reorganization the Reading Railroad's present valuation represents, or did represent at the time of the reorganization actual values. We have, for example, to give you an idea of what is involved in that, we have 160,000 acres of coal land, and we estimate that 90,000 of that acreage contains coal. We have an enormous system of railroads, the revenue from which you can see, and for the years 1901 and 1902 the total
241 gross receipts of our companies were sixty-two millions of dollars, and on gross receipts of sixty-two millions of dollars we have been only able to pay four per cent on twenty-eight millions of our stock, leaving——

Com'r PROUTY. You mean gross receipts of the railway company?

Mr. BAER. No; of the three companies, sixty-two millions; and there is no business, there is no large company that I know of that—with perhaps the exception of the Lehigh Valley—in the United States, where the earnings compared to the value of the business are so small as in the Reading system.

Mr. SHEARN. Now, I ask you how much your annual revenues would be increased by the increase in the price of coal fifty cents a ton?

Mr. BAER. I can not tell you, because the unknown factor is what the increased cost of the coal is.

Mr. SHEARN. No; but I mean how much more do you estimate you will receive for coal in a year—in this coming year—by reason of your increasing the profits fifty cents a ton?

Mr. BAER. I say I can not tell you, for two reasons; that I don't know as yet how much of the fifty cents a ton the domestic sizes—prepared sizes, confined to that, will be consumed in the increased cost that is upon us in producing this coal, nor am I able to say what the effect of the award of the Commission is going to be. Under the award of the Commission which went into effect the 1st of April we lose 23 working days, equivalent to a month, the reduction in hours of time amounts to 23 days and a little better, which means a reduction of time of working. In addition to that we have fallen short up to last night 200,000 tons of coal in April because the men won't work. They are working this week.

Mr. SHEARN. They were locked out, weren't they?

Mr. BAER. They weren't locked out in the sense you mean. They quit and refused to work unless we would give them ten hours' pay for seven hours' work, and we declined to do that, and they said they would not work; that was all there was about that. Now, I do not know
242 where there is dissatisfaction, I can not tell how many collieries we can work, I hope we can work them; but I can not form the remotest idea what, with the increase of wages, the increased cost of everything—because when wages in one direction are increased, supplies, and they are very large, increase—the cost of supplies increase, and what with the reduction of output of the mines, I am not in a condition to prophesy as to what the effect, financially, is going to be on our operations. I will be able to tell by the 30th of June pretty fairly, but you must excuse me from giving a guess at it. Now, for example, let me give you an illustration. In the month of March there was a great clamor about the market not being supplied with coal. Why, in the month of March we were compelled in the Reading Company to store 429,000 tons—half our output—for which no market could be found, and in the Jersey Central we stored 178,000 tons, so that when we began in March we had 237,000 tons in storage yards of the Lehigh & Wilkesbarre Coal Company, and on the 1st of April we had 529,000 tons of coal for which there was no sale. You see those are conditions that we practical men have to deal with every day and you can not——

Mr. SHEARN. But you hadn't announced your price at that time; no one knew what it was going to be?

Mr. BAER. Why, there was not any trouble about the price; we had a price in March; we have a price now.

Mr. SHEARN. What was it in March?

Mr. BAER. Well, I will have to——

Mr. SHEARN. $5.00, was it not?

Mr. BAER. Why, yes; that is one price.

Mr. SHEARN. Well, on prepared sizes I am speaking——

Mr. BAER. My dear friend, you only think of New York. You think New York's the world. $5.00 in New York. You ask me what the price in New York is. It is a varying price at different points. You gentlemen of New York, when you think, think always of New York. If you asked me the price in New York I would be able to say. It was $5.00.

243 Mr. SHEARN. And now it is $4.50; possibly that has something to do with the fact that there was not a market for all this coal you had stored, because you hadn't announced the price.

Mr. BAER. Well, it may or may not have been due to that.

Mr. SHEARN. Well, you say you can not fix an arbitrary price, but you find you can fix a price of $4.50, which is fifty cents more than it was this time last year, and that the people have to pay it, don't you?

Mr. BAER. Simply because that is a reasonable price, and bituminous coal has gone up into a higher figure in proportion to that. The advance in bituminous coal by reason of the extraordinary industrial conditions of the United States was even greater than that of anthracite. Of course the anthracite and the bituminous situation has been aggravated by the protracted strike, but I can not state how long we can maintain $4.50. For the present we can maintain that price and sell a reasonable amount of coal. At $5 a ton in March we could not. Now, I can not tell you what I am going to try on the 1st of May to advance the price of coal—perhaps ten cents a ton and try to maintain that.

Mr. SHEARN. And working it up to $5.00?

Mr. BAER. And work it up to $5 if I can. If the market won't take it I will have to come down.

Mr. SHEARN. What is the method of working it up?

Mr. BAER. Working it up?

Mr. SHEARN. Withhold the supply until the people are ready to pay?

Mr. BAER. There never was a time in the history of the Reading Railroad since I have been connected with it, and certainly none under my administration, when any supply of coal was withheld, unless it was withheld involuntarily as in the case of the strikes; and the theory of the Reading Coal & Iron Company has been all along—and one that I am intensely interested in bringing about—was to get in storage yards a large supply of coal, so that if a strike occurs, or if a flood comes,
244 as the floods did come last year, in 1901, December and February, and drown out our collieries, we will have reserved stocks upon which to draw. We are now engaged in building storage yards. We have capacity for a million and more tons, but for the last two years we could not put any coal in those storage yards, because the public demand for coal was so great, greater than we could supply, and the mine leaders would not agree to mine, to allow coal to be stored.

Mr. SHEARN. But I asked you what was the method of working the price from $4.50 to $5.00 a ton?

Mr. BAER. Fixing the price, seeing whether the market will take it, and have our agents go around and offer it, telling them, "If we

give you coal in May at $4.50, if you wait until June we will charge $4.70, until in the winter months it will go up to $5.00," and we will have the coal at $5.00, which is, under present conditions, a fair and reasonable price and will not give us an undue profit; it will not give us four per cent, if we could maintain $5.00 a ton——

Mr. SHEARN. Four per cent on what?

Mr. BAER. On our stock.

Mr. SHEARN. On whose stock?

Mr. BAER. On the Reading stock.

Mr. SHEARN. On the Reading stock. Have you informed Mr. Thomas of your intention to try to work the price of coal up from $4.50 to $5.00 a ton?

Mr. BAER. I have not.

Mr. SHEARN. Or Truesdale?

Mr. BAER. I have not. The circular put out announces that.

Mr. SHEARN. Have you any reason to believe that they will cooperate with you in that attempt?

Mr. BAER. I think they would be very foolish not to do it; if they can get the same price we can for coal they would be foolish to sell it at a less price, would they not?

Mr. SHEARN. You bring a comparatively small quantity of coal
245 to this market compared with what they bring? In other words, you could not fix the price for this market alone and unaided?

Mr. BAER. I think I could. I think if I undertake to sell coal at $4.50 and the rest undertake to sell it at $5.00 in this market, we would probably take the market.

Mr. SHEARN. Until the 800,000 tons you send here gives out?

Mr. BAER. Yes.

Mr. SHEARN. You only send to New York, as I understand, your surplus?

Mr. BAER. Yes; but don't you know that a very small percentage of any article, say ten or fifteen per cent, can affect the price? People don't like their trade to go. When you once get a customer—if you were a merchant you would understand you want to hold every customer and deal fairly with him, and if Mr. Thomas has a customer in the city of New York who says, "Mr. Thomas, I have always got my coal from you, and I want to buy it now at the same price we can get it from Mr. Baer's companies," Mr. Thomas would have to say, "All right, I will have to give it to you," because he would lose his customer if he did not.

Mr. SHEARN. So long as the small supply lasts, of course, as long as your 800,000 tons last, but after that goes of course you could not fix the price?

Mr. BAER. That is a question of reasoning that you and I would not agree about.

Mr. SHEARN. You say there is competition between these companies, these coal companies?

Mr. BAER. Yes.

Mr. SHEARN. In the sale of coal?

Mr. BAER. Yes. We try to take on other customers and we try to get into the markets wherever we can.

Mr. SHEARN. Do you encourage that as a policy of your companies?

Mr. BAER. I do. I tell my sales agents to go and sell coal, and when I see in any one month that our sales are behindhand, I send for the agents and want to know why it is that we have not sold more coal,
246 and each company does the same thing, as all merchants do, friendly and square competition. It is not necessary in a competitive business that every man should be a cut throat. The merchants of your town here sell practically at the same prices; they have competition; they are competitive in facilities, and quality, and everything else; competitive in energy; part of the business in selling coal, as in everything else, is to have good sales agents.

Mr. SHEARN. But Mr. Thomas has testified that there is no competition in the company, and he does not believe in it; that the greatest thing in the country to fear is competition.

Mr. BAER. Well, Mr. Thomas has to determine those questions for himself. I have not so testified. I believe in competition, but probably not in the sense you do. I do not see what this has to do with all this——

Mr. SHEARN. Does the Philadelphia & Reading Railway Company or the Central Railway of New Jersey make any effort to procure traffic in coal; that is, customers going to the Lehigh Valley or the D., L. & W., or to the Erie?

Mr. BAER. Why, no; not in that sense. You would have to go in and build. How could you get traffic in coal? Here is a colliery on the Erie Road. Do you mean to say we would go and build across country, to build a coal line of railroad and take the chances of getting coal from the Erie colliery? That is not practical.

Mr. SHEARN. I do not mean any such thing. But some of these collieries are reached by several roads; for instance, the Parish Coal Company up in Luzerne County is reached by the D., L. & W. and by the Central Railroad Company of New Jersey.

Mr. BAER. Where we go into a country we try to get all the coal we can; as, for example, the Pennsylvania Railroad Company is just now opening a branch that went into one of our collieries on the Schuylkill. We can not make any objection. We don't own it. It has been ship-
ping over our road. If any of the companies want to do it we
247 can not help it. It is a thing all of us can do. We do not like it, and we do not like to lose the trade, but we have no control over the individual operators if they want to make a new connection.

Mr. SHEARN. Don't you refrain from building into the territory of these so-called rival roads of yours?

Mr. BAER. No occasion to. The question has never been presented. The roads I am president of are located geographically in such a way that we could not well build, and would not want to go in other people's territory.

Mr. SHEARN. But the Central Railroad of New Jersey and the D., L. & W. touch the same region, don't they?

Mr. BAER. Yes.

Mr. SHEARN. Do you mean to say that the Central Railroad of New Jersey is actively engaged in an attempt to get traffic away from the D., L. & W.?

Mr. BAER. No; certainly not actively; but what I mean——

Mr. SHEARN. They would have to be pretty active to do it?

Mr. BAER. I simply know no case in which we are trying to steal any of the Delaware——

Mr. SHEARN. It wouldn't be a theft. You are entitled to it. There is no crime about it?

Mr. BAER. No; I do not think so; in fairness, I do not think where one company builds a branch road at great expense and adjusts the sidings and everything, all the essentials to deliver coal, and providing it is treating the coal miner fairly, that no company has a reasonable right to come over and say, "This is a little business that I want." I do not think it is the right way to do. The world is big enough. Each company can develop on its own lines, its own property, its own industries, and get along better in that way, and by encouraging people to locate and giving them proper facilities. The idea of building railroads, that one shall go into a developed country for the mere purpose of getting that other trade, is entirely disadvantageous from a railroad standpoint, nor is it any advantage to the public.

248 Mr. SHEARN. But irrespective of the question of the public or the question of motive, what I am anxious to know is the fact whether, as a fact, you do actively compete for one another's business up in the coal fields?

Mr. BAER. Why, as I tell you, the collieries are, so far as I know—they have their connections with a particular road; and in my administration I have not known of any case where there was a controversy between companies about the tonnage from a colliery, with the exception of the incident I gave you this morning, when the Ontario & Western came in and said they had a contract with one of Simpson & Watkins' collieries.

Mr. SHEARN. I understand, but outside of that, and since you know of no case where the companies have actively competed with one another for the coal business, the coal traffic.

Mr. BAER. For coal traffic? In the sense of building lines into other collieries they do compete in every way to get coal traffic and to get coal territory. If you hear of any person who wants to go into the coal business you probably will go to him and say, "Here, locate on our lines; we will lease you land, give you coal territory"——

Mr. SHEARN. I am not talking about collieries that are going to locate. Those that are located; take the Dodson Coal Company, on the Schuylkill region, which is reached by the Reading, the Lehigh Valley, and the Pennsylvania Railroad.

Mr. BAER. I do not know who has that. I do not know who ships that, but that would be regulated by a different condition of things in my judgment, and that is this: The party having a colliery would take into consideration what markets he could reach best over one system or the other. In such a case probably the Pennsylvania Railroad Company, a large system and having a small quantity of anthracite coal, Mr. Dobson might say, "I would prefer the Pennsylvania Railroad, because they have not as much anthracite coal as is required for their system; my chances of marketing the coal in the towns and along their lines

249 would be better than on the Reading." All those things actuate the individual operator when he comes to make a selection of the particular road with which he will deal.

Mr. SHEARN. But if he decides on the Pennsylvania do you go to work and actively endeavor to procure him to send his traffic by your line?

Mr. BAER. I do not know. It would depend on the circumstances. If we could offer him better advantages.

Mr. SHEARN. I thought you said you did not believe in that; that the world was big enough without resorting to such methods.

Mr. BAER. I said I did not believe in going to established industries that already had adequate railroad facilities and under the pretence of building a railroad that would lessen the cost induce that man to withdraw his traffic from the existing railroad; that I did not think that was a wise policy or a good one.

Mr. SHEARN. Do you say that it is a fact that you do compete actively with other railroads for coal traffic where there are two or three lines reaching the same region?

Mr. BAER. Why, I can not answer it in any other way than I have answered. I have tried to be explicit about it.

Mr. SHEARN. That will do if you can not answer it any more definitely. Now, what about not interfering with the territory covered generally by these various railroads? Isn't there a pretty well marked division of territory?

Mr. BAER. How do you mean?

Mr. SHEARN. For instance, in Philadelphia, all the coal there, practically all the coal there, is brought by the Reading and the Pennsylvania, is it not?

Mr. BAER. Well, yes and no. The Lehigh Valley sends coal there. The Lehigh Navigation Company is a very sharp competitor of ours in Philadelphia, and the Pennsylvania sends coal there. The Lehigh Navigation Company has a canal and can bring its coal around by water, and it goes up on to the Schuylkill, right in the heart of Philadelphia,
250 and is a very decided competitor. But what interests you in Philadelphia? Is that interstate commerce? Where are you going to now? Are you going to redeem Philadelphia from the bondage of the oppressors?

Mr. SHEARN. Now, I ask you whether you know if there is any arrangement whereby one road keeps out of territory that it might reach but which has customarily been supplied by another road?

Mr. BAER. I do not know of any such thing.

Mr. SHEARN. You do not know of anything of the kind?

Mr. BAER. No.

Mr. SHEARN. Now come to the point about the allotment of tonnage. You know of no agreement whereby the tonnage of the respective companies is divided up into substantially fixed proportions?

Mr. BAER. No; I do not say that.

Mr. SHEARN. Well, do you?

Mr. BAER. Do not say I said something which I did not say.

Mr. SHEARN. Do you know of any such agreement?

Mr. BAER. I do not; but I will explain what I do understand to be the long practice. Years ago—how many I do not know, I am speaking only from my understanding of the situation and what from a railroad standpoint I have learned in my relations with railroads——

The CHAIRMAN. Your answer to this question and the explanation which you have commenced will take some little time, and it is apparent that your examination can not be finished to-night.

Mr. BAER. I am afraid that is so.

The CHAIRMAN. Can you be here to-morrow morning?

Mr. BAER. How long, Mr. Shearn, are you going to take?

Mr. SHEARN. Not to exceed half an hour.

Mr. BAER. Couldn't you finish with me to-day? I want to go to-morrow and discuss some bills that were telegraphed to me last night. They are important bills and I would like to get a chance to take them up and think about it.

251 Mr. SHEARN. Could you come for a few minutes on Friday? Suit your convenience.

Mr. BAER. I will come in the morning.

Adjourned to to-morrow, at 10.30 a. m.

NEW YORK, N. Y., *April 30, 1903—10.30 a. m.*

The CHAIRMAN. Gentlemen, are you ready to proceed?

Mr. SHEARN. I ask Mr. Baer to take the stand.

The CHAIRMAN. Wait one moment, please. Is Mr. Meeker in court this morning? [No response.] Then, Mr. Baer, you may take the stand, please.

GEORGE F. BAER resumed the stand.

Mr. SHEARN. Mr. Meeker asks whether he may be excused until 2 o'clock.

The CHAIRMAN. Is there objection? Mr. Meeker may be excused until 2 o'clock.

Mr. SHEARN. Bearing upon your testimony yesterday, Mr. Baer, that you intended to work the price up from $4.50 to $5 a ton, will you state if purchasers in this month or in the month of May, if the price is ten cents higher will be entitled to receive their coal at that price irrespective of the time of delivery?

Mr. BAER. No; coal must be delivered in the month.

Mr. SHEARN. In other words, if they place an order with you this month for as much coal as they want at $4.50, if you do not deliver it this month and the price next month is $4.60, they will have to pay $4.60?

Mr. BAER. Yes, sir.

Mr. SHEARN. And if they do not deliver until next month they will have to pay what the price is then, or say, $4.70?

Mr. BAER. Yes, sir.

252 Mr. SHEARN. Then you do not expect absolute and unconditional purchases at $4.50 to be delivered except as soon as you are able?

Mr. BAER. The delivery is restricted to the ability to deliver in the month.

Mr. SHEARN. That suggests another method by which you will succeed in working the price up, does it not—to withhold the deliveries until the price reaches the level which you think is proper?

Mr. BAER. But we do not. We deliver all the coal, and are anxious to deliver all the coal we can mine in any month. We are exceedingly anxious to do that. It is to our interest to do that.

Mr. SHEARN. Since 1897 and 1898 there has been an enormous increase in the production of anthracite coal, has there not?

Mr. BAER. Well, "enormous" is a pretty strong word.

Mr. SHEARN. Sir?

Mr. BAER. "Enormous" is a pretty big word. I would say there has been a steady increase in the consumption of anthracite coal beginning possibly in 1897. I will give you relatively the figures of our company which will probably be an index to the others. [After consulting report.] The tonnage was 9,464,598 tons in 1897. That is the report of the Reading for that year. I think I can give you another figure from that.

Mr. SHEARN. Perhaps this will assist, Mr. Baer——

Mr. BAER. I will get at these figures very readily if you will just allow me for a moment. It increased from the figure I have given you to 9,533,000. That is the report of June 30, 1898, for the year ending at that time. That was an increase in round numbers of about 70,000 tons.

Mr. SHEARN. Without dwelling on that any more, I call your attention to the reports showing the shipments of anthracite, given in the Treasury Department's bulletin entitled "The Coal Trade of the United States," on page 690, showing that the total shipments for 1898 were 48,899,751; for 1899, 47,665,201; for 1900, 45,107,484, and for
253 1901, 53,568,214. Now, when I spoke of there being an enormous increase, I was referring to the fact that there was a difference between 1901—between fifty-three and a half millions for 1901 as compared with forty-one millions for 1898, and during this same year——

Com'r PROUTY. Just a minute. Mr. Baer, won't you give us the production of your company for each year? You have given us the production for 1897 and 1898; now give us the production for 1901.

Mr. BAER. I have given you '97 and '98. I will give you 1900, too. In the year ending June 30, 1900, the tonnage of anthracite carried—this is the transportation, not the production—was 10,672,556.

Com'r PROUTY. That is for the year ending June 30, 1901?

Mr. BAER. No, ending June 30, 1900. It decreased the next year to 10,523,891, which was a loss of 148,665 tons.

The CHAIRMAN. Have you the figures for the year ending June 30, 1902?

Mr. BAER. Yes, sir. [Referring to report.] In 1902, 9,465,953 tons, a loss of 1,057,038 tons, as against the previous year.

The CHAIRMAN. There was a strike?

Mr. BAER. Yes, sir. Our fiscal year ends June 30, and these figures are based on that. The strike accounts for the decrease in 1901. The 1901 figures cover from the 1st of July, 1900, to the 1st of June, 1901, and we had a strike in the fall of 1900.

Mr. SHEARN. Was the capacity of the collieries the same in 1896 as it was in 1901?

Mr. BAER. Well, approximately. Our colliery capacity is slightly decreasing by reason of the number of workable collieries being reduced. Some of them were drowned out during the strike, and it will not pay us to pump them out. The quantity of coal that can be mined from some

of the shafts is too small to justify the expense of pumping them out and repairing them.

Mr. SHEARN. Was there in 1896 about the same colliery capacity as in 1901?

254 Mr. BAER. Approximately. The number of collieries is less now, but approximately we can produce about as much coal.

Mr. SHEARN. That is, in 1897, 1898, and 1899 you could have produced as much coal as in 1901 if you had chosen to do so?

Mr. BAER. Not if we had chosen to do so. We could not market it.

Mr. SHEARN. People didn't want the coal in those years?

Mr. BAER. I do not known whether they wanted it or not, but we could not sell it in the market.

Mr. SHEARN. At the price you asked for it?

Mr. BAER. We could not sell it for the price we asked in the market. I do not think we could have sold it at all.

Mr. SHEARN. During those same years new collieries have been developed and old collieries have been discontinued?

Mr. BAER. No.

Mr. SHEARN. Have you not spent large sums of money in developing new collieries, new workings?

Mr. BAER. No. We have spent some money, not on new workings, but in rebuilding shafts, and we have spent a considerable sum of money on five new collieries that we have located which will take a good many years to get ready. It takes a very long while in the Schuylkill region to develop a colliery. It can not be done under—well, you can hardly do it under three years to start with, and then the colliery capacity is very much limited because until you have your passageways made you can work but very few people in them. You have got to be driving ahead and making space; that is, opening out the colliery to enable men to work, and taking into account the depth to which we have to go now, which runs from 1,600 to 2,000 feet, it takes a very long while to sink the shaft, and you can work very few men in it; it is very troublesome to work and tedious to work, and so it will take from three to five years in our region after we have started the development to develop a colliery.

255 Mr. SHEARN. But prior to 1896 you had also been spending large sums of money for similar purposes—sinking shafts and developing new collieries—have you not?

Mr. BAER. No; during the time of the receivership there was a rebuilding of breakers and the enlargement of shafts and repairs of that kind, but the number of collieries that the Reading had, as I recollect it, in the beginning of the receivership, was 47, I think. Some of them were unprofitable and gradually were abandoned, and then the capacity of the other collieries was increased generally by enlarging the breakers so that more coal could be passed through the breakers, because you well understand that when a colliery has work a good many years the field of operations underground is very broad, you have more rooms in which you can work, and the colliery can soon produce—the mine, I mean—can produce more coal than the breaker which was originally put there will take. We have tried constantly to enlarge the breakers and increase the facilities.

Mr. SHEARN. You have enlarged the breakers and thus increased the facilities for producing coal in the years I have mentioned, have you not?

Mr. BAER. In a general way.

Mr. SHEARN. Quite largely increased your facilities for producing coal?

Mr. BAER. We have bettered our facilities, I should say. I do not think we have increased the capacity.

Mr. SHEARN. The result is that your ability to mine coal has been increased since 1896?

Mr. BAER. No; I do not think so. I think the improvements we have made enable us to reduce cost and have better facilities than we had before, but I think what we call the mine capacity—that is, the output of the mine, has not increased from that time.

Mr. SHEARN. You recollect the month of January, 1902, don't you, and what an enormous production of coal there was—5,000,000 tons mined during that single month?

Mr. BAER. Yes, sir; and I recollect, too, in the month of ——

256 Mr. SHEARN. You did your share of that?

Mr. BAER. I will look and see about that.

Mr. SHEARN. January, 1902—not January of this year.

Mr. BAER. Just pardon me until I see. No; on the other hand, in January, 1902, we fell behind the previous year to the extent of—I will have to figure that. We produced 839,300 tons in January, 1902, and in January, 1901, we produced 1,085,744.

Mr. SHEARN. Then, in January, 1901, you produced very much more coal than you had ever produced in any one month before?

Mr. BAER. No; we did not.

Mr. SHEARN. Had it ever been equaled?

Mr. BAER. Yes, sir. I do not remember what the highest month is—I am speaking of tonnage now—but I think we have nearly reached 1,200,000 tons, or possibly a little in excess of that. But that was not the highest month.

Mr. SHEARN. When was it that you reached that maximum production in any given month?

Mr. BAER. I really can not answer.

Mr. SHEARN. January, 1903?

Mr. BAER. Oh, no; January, 1903, was only 1,080,000 tons.

Mr. SHEARN. With all these differences in production, indicating a higher producing capacity at some time than is actually put out, and with these increased expenditures for opening up new shafts and increasing the productive capacity of your mines, how do you account for the fact that your proportion of output has remained practically fixed from 1896 down to the present time?

Mr. BAER. Because the capacity at that time was based on colliery capacity. The arrangement, as I have understood it (and I know it to be so), was that the colliery capacity—that is, the capacity of the collieries on each line of railroad—was taken for the purpose of determining what the proportion ought to be with reference to the distribution of cars.

The difficulty in the situation for a series of years had been this:

257 In the winter months—in the fall and winter months—say for six months in the year, the market will take all the coal that can

be reasonably mined. We can work full time, and there is no difficulty in the market taking it, but in the summer months, by reason of the fact that anthracite coal is largely used for domestic purposes and not for manufacturing purposes, the consumption of coal falls off very heavily, and then we get into this trouble: When the collieries, counting the coal company collieries and individual collieries, want to mine full, they get our cars filled with coal that can not be sold, and we have strings of cars on our sidings, and our ports are closed up—that is, our docks, I mean, and wharves are filled up with coal that is dumped there and with cars standing there, and the whole transportation system is put in such a condition that you can hardly move the traffic for which there is a market. Now, during these times in the past, the private operators always complained that the railroad companies, such as the Reading Railroad, which at that time owned the coal & iron company's stock, discriminated in favor of its own company and gave its own collieries cars, to the exclusion of others, so that they would have to shut down their mine when the rest would be working. A great many plans had been suggested during the many years in which the anthracite coal business had been going on to try to adjust that, and finally the private operators and the transportation officers of the railroad companies came to an understanding that it would be fair to take the colliery capacity along the lines of each transportation company, you see, and then, taking the normal output of a year, ascertain what percentage of the market each company supplied, merely for the purpose of distributing the cars and enabling the transportation companies to get rid of this congestion. The private operators were content with that. They said that was fair, and if the rest would not mine more than the market would take, they would not mine. So it came about that practically the basis that is given here—what is called
258 the tonnage based upon percentage—was accepted by everybody.

For example, take a month and see how that is done—for the month of April or for the month of March, which are the figures I have before me here. We have to determine what the possible output of the month of March, this year, will be; what the market will take; what can be marketed without congestion, and we would take what was done in a normal month of March preceding and add a percentage, and then say to the transportation people, Now, you distribute the cars on this basis to the different collieries. If it turns out as it does some months—we usually start with as low an average as we can, and in spite of this distribution we get our roads congested and our ports congested and our sidings full of loaded cars, whereby our equipment and everything is put out of use—we can not use it even in the bituminous traffic or in any other way. We simply say to this colliery here that our port at Port Richmond is full and we can not take any more coal there and can not give you any more cars to Port Richmond or to Port Reading until these loaded cars are out of the way, because we have not the cars. That is the theory upon which it works Now, I offer you, or I submit for your consideration, Mr. Ruley's tabulations. I have just taken them from the files. They cover the years since I have been president of the company, beginning with January, 1901, and they all are here. They show what the actual tonnage was, or would have been if the old basis had been adhered to, and what the increase or decrease is. In March, 1903, there

is a decrease in the based tonnage of the Reading of 26,171 tons over the preceding year. The Lehigh Valley Railroad in March has an increase over the based tonnage of 146,000 tons.

Mr. SHEARN. That decrease of the Reading was out of a total of how many tons?

Mr. BAER. Of 10,142,000 tons.

Mr. SHEARN. And the increase in the Lehigh Valley tonnage was out of a total of how much?

Mr. BAER. It increased from 502,000 to 964,000. That was the actual increase, but on the tonnage basis, the tonnage basis of the total mined would have been 815,000.

259 Com'r PROUTY. Now, Mr. Baer, who says to the transportation companies at the beginning of a month how many cars you shall distribute to all the collieries on their lines?

Mr. BAER. Every president acts for himself. In our case it would be Mr. Voorhees. He would be given instructions. He has charge of the transportation department—instructions that we would probably mine—that there would probably be so much coal mined.

Com'r PROUTY. Who would determine that?

Mr. BAER. I determine that each month. I determine it with Supt. Luther, who is in actual charge in the coal regions, and with General Manager Henderson, each month. We do not need to determine it now. I say I determine it, but I have not been called upon to determine it or been in consultation about it since 1900. I want to say that since October, 1900, there has been no necessity for determining anything of the kind. We have increased our car capacity of the Reading from 18,000 coal cars to 25,000, but the capacity of tons is much greater. So that since 1900, when operations were resumed, in November, we have transported and mined and given cars to the operators to mine all the coal that could be mined. The difficulty was that owing to floods and strikes it is impracticable and has been up to this time to mine and transport as much coal as the market would take until, as I told you, in March, when we were compelled to store coal, because there was no market for it. Now, the only time when there was an exception to this was when, in January, the private operators were claiming, as was stated here, that the average market price of coal was not the price at which we sold our coal, but was the general market price, which, instead of being $5 a ton here in New York, might be $10, because, after taking advice of counsel, the Lehigh Valley Coal Company was compelled to say to the private operators, "Well, you can take and sell your coal and we will sus-

260 pend this contract for ninety days to see what you can do rather than run the risk of being mulcted in damages." If they could have maintained their contention, the Lehigh Valley Coal Company would have had to pay $3 or $4 a ton more for the coal they bought than the price at which they sold it. I stood out and the Reading Company was determined to take the risk until January, and finally when the other private operators had gained their point, I told our private operators, "If you want to try this, you can try it." What happened was this: It worked very well with these people for a week or two, and then they got their coal in the cars and they crowded our docks and our wharves and they would not sell except at a high price—$9 or $10. We were selling

our coal at the old price; they could not sell theirs and they were trying to hold our cars—that is, keeping their coal waiting ten or fifteen days in our cars, and thus we would lose the use of our cars, and then I did give an order to Mr. Voorhees that every colliery where cars had not been unloaded at the ports or at any marketable point, and the shipper had not succeeded in selling his coal and returning the cars, that his new cars—his assignment of new cars—should be limited to the number of cars which he had in use—was to be counted in his allotment of cars—that is to say, if, under ordinary conditions, the colleries was entitled to fifty cars, and that colliery had thirty cars loaded with coal for ten or fifteen days—we gave them a reasonable time—if they were not disposing of their coal and were using our cars for storage, that the number of cars they used for storage should be counted in their quota. With that exception there has been no restriction of the number of cars going to colleries that I can recall.

Mr. SHEARN. You say that during the month of March you were obliged to store the coal—the market would not take it?

Mr. BAER. Yes, sir.

Com'r PROUTY. On the 1st of April, say, who determined the amount of coal that shall be mined by your system during that month?

261 Mr. BAER. Who determined it?

Com'r PROUTY. Yes; who determined it?

Mr. BAER. Since the first of April we have mined all the coal we can. There has been no restriction by order, as I tell you, since the first of November, 1900. The difficulty has been to get the coal. For example, we fell behind in the month of April—the scales close at midnight to-day—we will probably fall behind 200,000 tons less than last April, because the mines did not work. For the last two years we have not been able to have anything like regular work in the regions at all. The men quit work for a holiday or on any pretense, even outside of a strike, and our effort has been—and it is a continuing effort—to get the miners to work. We are in no way limiting production and have not in any way limited production. The production has been limited by reason of strikes and the things over which we have no control. That condition has only existed since November, 1900. Previous to that in the summer months more coal could have been mined than was marketed, and it was customary to arbitrarily determine about how much the market would take and base the distribution of cars in the summer months on that. Whenever it was found the market would take more, of course the cars were furnished and the collieries worked. There was no hard-and-fast rule about it at all.

Mr. SHEARN. You have the power to restrict the output, then, if you choose to do so?

Mr. BAER. I suppose the coal & iron company, if it disregards its obligations to the public and its obligations to the stockholders, could shut down every colliery and be as arbitrary as the strikers, and not mine a pound of coal.

Mr. SHEARN. You have it in your power to restrict the output of anthracite coal if you choose to do so?

Mr. BAER. I say, that if the Reading Coal & Iron Company wants to disregard its obligations to its stockholders and its public duty, that it

has the corporate power to direct that only one or more of its colleries shall work, or that none shall work.

262 Mr. SHEARN. I understood you to say to Commissioner Prouty—I understood Commissioner Prouty to ask who had the say as to the restriction of output, if there was to be a restriction, and I understood you to say that you did.

Mr. BAER. I am speaking for my company—with the executive officers of the company, those things are entrusted to me and I act with advice of the executive committee or of the board. I didn't mean I had it individually, but as the head of the corporation to whom the details of business of that kind is naturally entrusted. That is all I meant to say. It is a very troublesome question. Very frequently I consult the sales agents and I consult the general manager, Mr. Henderson in Philadelphia, and I consult Mr. Luther, and also Mr. Harris, who has had large experience, and I often see other people and talk to them about what the condition of the coal trade is and I rely a great deal upon the statistics, and when I find that our collieries are behindhand, as for example, take January and February; they were very disturbing factors to me—1903—I will tell you why.

Mr. SHEARN. And to all the rest of us.

Mr. BAER. No; it didn't worry you so badly. In January, 1903, I found that we had decreased 141,879 tons and the Delaware, Lackawanna & Western had increased 260,403 tons; in other words, that the Delaware & Lackawanna Railroad had in January, 1903, with its much smaller colliery capacity, as I suppose, mined within 24,000 as much coal as the Coal & Iron Company in our region, and I was exceedingly anxious and prodded all I could in the next month to get our production up. In February the result was that they increased only 104,000, and we decreased 57,000.

Mr. SHEARN. As the result of what?

Mr. BAER. The result of mining the quantity in February that we mined and transported——

Mr. SHEARN. Did you call the attention of the president of the Delaware, Lackawanna & Western to the fact you were delaying the percentage agreement?

263 Mr. BAER. I did not; it was not necessary. There is no percentage agreement in any such sense as that. There is not at all. The Delaware & Lackawanna Railroad Company, or any company, can transport as much coal as it pleases, and you will see throughout that it does.

Mr. SHEARN. It can't if it lives up to the agreement?

Mr. BAER. There is no agreement about that.

Mr. SHEARN. But there was an agreement, wasn't there?

Mr. BAER. I know of no such agreement other than the one I have told you. There was an agreement to make the basis of distribution of cars on that percentage, but there was no understanding or agreement that no man should mine more than that. That was based upon the recent——

Mr. SHEARN. I am not interested in what is mined. I am interested in what is carried. You say there was an agreement determining the percentage of the cars furnished to the mines to carry the coal?

Mr. CAMPBELL. I object to your put[illegible]g into the mouth of the witness what he did not say.

Mr. BAER. Is there any misunderstanding on that subject?

Com'r PROUTY. Mr. Baer has not gone quite that far. He has not told us how the percentage which [illegible] Reading Company was to carry compared with the Lackawanna.

Mr. BAER. At that time the basis of colliery capacity—between the Delaware & Lackawanna and the Reading, the Reading was twenty fifty and the Delaware & Lackawanna was eleven seventy.

Mr. SHEARN. What were the other percentages?

Mr. BAER. I am going to give you these papers. I want, as a part of my testimony, to offer Mr. Ruley's returns. Here they are from January, 1901, through every month, just showing what each proportion of the transporting companies did.

Com'r PROUTY. Now, Mr. Baer, when you sat down at the beginning of the month to determine how much the Reading Company
264 should produce, how much the market would take, would you estimate that upon the theory that the Reading road should carry twenty per cent of total output?

Mr. BAER. Undoubtedly, because that was the fair transportation measure of colliery capacity, you see.

Com'r PROUTY. Now suppose that you found that you had exceeded that twenty per cent one month, what would you do the next month?

Mr. BAER. We keep on mining without regard to that, as you will see. There is no deduction or any credit given one way or the other.

Com'r PROUTY. When you determine at the beginning of the next month how much the Reading should mine that month, would you take into account that the Reading had during the previous month exceeded or fallen below twenty per cent?

Mr. BAER. Not at all. As you will see, no account has been taken of it whatever in all the month's reports; the change has been very great from that time; some of them are far behindhand; but, as I told you, this is no longer a practical question. We have done nothing with this since 1900—November, 1900. I am speaking of a period of time prior to that. Since November, 1900, we have not paid the least attention to percentage allowances whatever; we have kept up the statistics, which are valuable to us, what each company is doing and what the market is taking, because we don't want to have our colliery capacity reduced; it would reduce our transportation; and if we find that any of the other companies increase their colliery capacity, why, we will go on and increase ours just as I am doing now; as I told you, we are building five new collieries, large ones, on the Reading; we are building two at the Lehigh & Wilkesbarre, because I see the contingency that our colliery capacity will be exhausted and that we will be deprived thereby of transportation and of a market for coal which we are otherwise reasonably entitled to.

Com'r PROUTY. That is to say, you intend to transport your percentage of this coal and you are satisfied that other companies should transport their percentage?

265 Mr. BAER. I am perfectly satisfied so long as the percentage is the measure of colliery capacity, but I am not going to limit myself to any percentage at all; I am not going to agree—I am going to mine and sell all the coal that I can.

Com'r PROUTY. Now you say you are opening up five new collieries?

Mr. BAER. Yes.

Com'r PROUTY. As I remember the testimony, your company and the Central of New Jersey have sixty-odd per cent of all the coal lands, while they only send to market only thirty per cent of the coal. Why don't you put up twenty collieries instead of five?

Mr. BAER. Because I could not sell the coal; to-day the number of collieries operating through the region is equal to the market conditions and in the next month or two probably will exceed it.

Com'r FIFER. Wouldn't the market demand be increased if the prices of coal would be reduced?

Mr. BAER. No; the price of coal can not be reduced at all unless operations are carried on at a loss. Now that is a factor that must not be overlooked. The reasonable profit that is now made at the present prices of coal is not sufficient return for the investment, and if the market price—we can't reduce the cost; the cost is continually increasing, because the coal must be mined at greater depth. You will see (referring to papers) I think I can give to you from these—you see this: Cost of coal mined and purchased for the year was $2.02, which is 20.5 cents higher than the cost for the previous year.

Mr. SHEARN. What year is that?

Mr. BAER. That is 1902. Now 1901——

Mr. SHEARN. Did you state what the cost was, Mr. Baer, when you said that?

Mr. BAER. $2.02.

Com'r PROUTY. Does that include your royalties?

Mr. BAER. It includes the royalties on some lands that we leased from the Girard estate, but there is no charge for royalty to us.

266 Mr. PROUTY. You do not make any charge against yourself in your bookkeeping?

Mr. BAER. What I had—that is not charged in this—out of the earnings of the coal company we are required to take five cents a ton on our lands as a sinking fund to be paid into the general mortgage; then, in addition to that, we take five cents a ton for what we call the exhaustion of coal lands, which becomes a fund under our control, and from that fund we pay the opening of new collieries, on the assumption that whilst the coal has been taken away, that if that money is put into improvements on the coal property, that it represents fairly the value of the estate. But if we have royalty to pay—the average royalty on all the coal we mine—the Reading Coal & Iron Company would have been operated at a loss every year since I have known anything about it.

Com'r PROUTY. What is the average royalty?

Mr. BAER. The royalty runs from 40 to 45 cents a ton on prepared sizes, and I suppose that, taking the pea and the buckwheat and the smaller sizes, that the average royalty would be from 30 to 33 cents. I remember we figured that out in a series of collieries that we were paying the royalty, which amounted to 31.2 cents on all the sizes.

Mr. SHEARN. Does that cost of $2.02 also include the cost of coal produced?

Mr. BAER. It is the average cost of the coal purchased; yes.

Mr. SHEARN. Coal produced and coal purchased?

Mr. BAER. Yes. It is much greater, of course, now. That was for 1902. The cost of mining our coal has been running—the cost of mining the coal and delivering it on the cars has been running at $1.98 a ton on all sizes.

Com'r CLEMENTS. I want to be sure that I understand you, and if I do it amounts to this. Now and heretofore there is and has been an understanding between these coal roads and coal companies whereby the cars were distributed on percentage basis, based upon the capacity of the collieries?

267 Mr. BAER. Well, heretofore there has been. Not now.

Com'r CLEMENTS. Well, I wanted to see whether I thoroughly understood you.

Mr. BAER. Up to 1890 that was so.

Com'r CLEMENTS. November, 1890?

Mr. BAER. Yes.

Com'r CLEMENTS. And it was actually a practice?

Mr. BAER. It was actually a practice prior to 1890, in the summer months.

Mr. MOOT. 1890, or 1900?

Mr. BAER. 1900; I will get those mixed up.

Com'r CLEMENTS. Now, I understood you there was no change in the understanding of that arrangement except——

Mr. BAER. There was no change in it; there never was any agreement that I know of.

Com'r CLEMENTS. I do not mean a written agreement, but an understanding.

Mr. BAER. There was a plan that received the assent of everybody and was acted on for several years prior to 1900.

Com'r CLEMENTS. And that has not been changed, except that on account of floods and strikes and other conditions you have not found it necessary to apply?

Mr. BAER. Yes; that is it. It has ceased to be any use to us at all.

Com'r CLEMENTS. When it was applied, did it in fact result in a limitation of the output of the mines for the reason that they would not mine more than they could get cars to ship?

Mr. BAER. Undoubtedly; but they always got sufficient cars to supply the market. There was never any limitation.

Com'r CLEMENTS. Yes; to supply the market at the prices.

Mr. BAER. Certainly; yes.

Com'r CLEMENTS. Now, regardless of the question as to whether it would be proper and justifiable, leaving all that out, undoubtedly the market would have taken more at a lower price, would it not?

268 Mr. BAER. I think not, Com'r Clements, I think not; because the market for anthracite coal is limited so largely to domestic sizes, and the manufacturers don't use it, except in cities, to any extent where there are smoke ordinances; and the increase of anthracite coal depends largely upon the increase of population and the increase in the wealth of the population, because there is very little coal that we can market except in New England and New York and New Jersey and Pennsylvania. We send some of it West, but it is only the people who live in the West and who are able to use anthracite coal as a fuel because of its

cleanliness. We have no market for small sizes of coal in the West; they have to be marketed at much below bituminous coal in order to get rid of them; the small sizes used to be waste.

Com'r FIFER. Is not bituminous coal a competitor of anthracite?

Mr. BAER. Oh, a very severe competitor in every place and everything.

Com'r FIFER. If the price of anthracite coal were raised to ten dollars, would that increase the consumption of bituminous coal?

Mr. BAER. At once. The price of anthracite coal is necessarily regulated by the price of bituminous coal. You can not get away from that proposition. Bituminous coal exists everywhere. It can be brought cheaply to this great consuming territory. It is a better steam fuel in every way than anthracite, and our market is restricted. I am quite satisfied that the effect of this strike is going to put us back years and years in regaining our market. The New England market has been opened to the Nova Scotia coal and to foreign coal and to bituminous coal, so that we really can sell very little anthracite coal except along the seacoast, and that we can sell because we take it to Port Richmond, because we have a fleet of our own vessels we own and we have to operate, and we send it to the ports along the seacoast; but it is almost impossible now for us to market any anthracite coal in that——

269 Com'r FIFER. If these coals are sold by competitors in the same market as yours at the price of anthracite coal, wouldn't that increase the demand for it?

Mr. BAER. No; because as I say—why, the principal consumption of anthracite coal is for household purposes. If you would reduce it to a point below the selling price of bituminous coal, yes; but you see that is an impossibility. Bituminous coal can be mined and placed in cars at a profit, under normal conditions, at 75 cents a ton, and probably 60.

Com'r CLEMENTS. Go back to this understanding about the distribution of cars, based upon the capacity of the collieries. That could be applied again if the conditions were to become such as they were prior to 1900, November?

Mr. BAER. I suppose so.

Com'r CLEMENTS. There is nothing in the way of carrying out now what was done before?

Mr. BAER. I suppose that if a condition exists by which it is impossible to market the coal, anthracite coal, at a fair price, say that the Reading System, that we would be compelled to limit the production at our mines, and that in limiting the production at our mines and all the private operators', so that we might work four days a week and they work four days a week—there is no way I can see of avoiding that. The problem is simply that you can not sell anthracite coal at a loss, and that if you undertake to compete with bituminous coal and meet the low price of bituminous coal, you will sell it at a loss. Now, if we undertake to put an unreasonable profit on the coal, then the public would have a right to complain, but in view of the fact that we year after year exhibit that the two anthracite carrying companies, the large ones, have not declared any dividends for years, you can readily see that the public can not ask us to do an impossibility. These roads—the Reading road passed through three receiverships in its effort to market coal. There

are many reasons why we can not compete with bituminous coal
270 on this question of freight rate. Now, you see, bituminous coal can be carried at a much less cost than we can carry it for this reason: If you take the bituminous coal rates you will find that, except in the Norfolk & Western and some of those roads that are built through a cheap country, the bulk of there——

Com'r PROUTY. What do you mean by a cheap country?

Mr. BAER. I mean the damages are cheap, the right of way. I did not mean it in any offensive sense; the country in which railways could be built cheaper.

Com'r PROUTY. I thought you might mean a country where they could operate cheaper.

Mr. BAER. Even they could be operated more cheaply too. Now, for example, if a road has 75 per cent of the merchandise traffic, then it can carry other traffic, say 25 per cent, other traffic such as grain and wheat or bituminous coal, as an incidental business, at a reasonable cost, because every bit of new traffic it gets of that kind lessens its general expenses. Its roads there—if it has equipment and all—this additional traffic can be actually carried at a much less cost than a road that is confined to the carrying of a specific article. Our traffic in anthracite coal is the bulk of our business. Until a few years ago it was eighty per cent of our traffic. Now it is about sixty. And that traffic first has a shore-call (sic.?). We have most expensive roads. I would be very glad if this Commission would go through the anthracite region and see our roads and grades and the cost of sidings and the whole terminal facilities there. We have no general traffic for those roads because of the peculiar condition of the country, the business of the country being limited to the anthracite coal production plus the incidental industries that go up there by reason of the population centering there, so that the railroads have to create the towns, and they get the business only that comes from the people who are engaged in either mining coal or transporting coal. There is very little business done there, it is not a country where general manu-
271 facturing can be carried on; they have silk mills and woolen mills, where they can use the surplus, the girl labor, and all that sort of thing; but there are no great manufactures anywhere from which we can draw; and the only business, therefore, upon which we can depend is the coal business, and when a colliery is exhausted, as they are fast becoming exhausted, that whole investment of branch and sidings is gone. Now in addition, look at the territory through which we have to transport our coal. When we get out of Schuylkill County we reach Berks County, and we immediately strike a very settled, thickly populated, country, where the expense of operating becomes very great, as, for example in Reading; Reading from a small town with a grant of the legislature authorizing it to occupy a street, has now become a city of nearly 100,000 people. Within the last two years we were compelled to build for our freight traffic around the city at a distance of some several miles and a cost of two million dollars. The same thing is going on through the towns—we are continually building up territory—until you go to Philadelphia, where now, by reason of the congested condition of Philadelphia, we have to build a line of railroad coming in and avoiding the heart of the city and getting around some

grades and coming in at Neshaminy Falls, all for traffic; and in addition to that we are confronted with the other fact that the City of Philadelphia has asked us to elevate all our tracks, not only on 9th street but Willow street. The same is true when you follow our lines here to New York, the cost—there is no country—take from Reading to New York, there is no section of the State where the increasing expenses of operating railroads by reason of the population have become so great and where the terminal facilities required to do your business costs so much; we have 300 miles of track in the city of Philadelphia, almost exclusively for distribution. Now, then, you come to that question, too, of distribution. There we are met with another problem that don't affect the bituminous coal trade. Bituminous coal is taken from the mine just as it is, it is one coal. It is shipped in a
train load, generally used by manufacturers. They might have
272 a train load of three thousand tons, say, which is the maximum in our road, of coal all going to one place, for a manufacturer where they have facilities for unloading. Now, you take the anthracite coal; we start a train load of coal up in Schuylkill consigned for New York, for example. Now, that train will consist of six, seven, or eight sizes of coal, and it may be white ash, or red ash, or other kinds of coal, and we have got to ship it out and sort all this coal, because one customer wants broken, another pea, another chestnut, and so on; one wants pea of this quality, and another that; so that the use we get of our equipment, this enormous delay in not only the switching, but the delay in sorting out this coal and getting it unloaded—used largely for domestic purposes—when we get to a city like Philadelphia we have got to ship probably one car to this coal yard, and there are forty coal yards in Philadelphia on our line to which we have to ship; we have to send to a small manufacturer two or three cars of a particular kind of coal—all of this involves switching movements that are always costly, and, in addition to that, it involves a delay, so that the return, from the time the car leaves the colliery until it is returned back empty to the colliery, is proportionately much greater than in the case of bituminous coal. All of those are factors which render it impracticable for us ever to reduce the rate of anthracite coal down to bituminous coal—to the rate per mile on bituminous coal. It would absolutely destroy the Reading Railroad in this, that it could not be operated at a profit. If you take off and reduce the cost—I mean the rate of coal to the harbor of New York—in view of the increased costs that are put upon railroads to-day—we have to increase wages ten per cent—it means a million one hundred thousand dollars on the Reading Railroad alone; we are here in the midst of an order from an association directing all the tug men—tug engineers of the harbor of New York and from Port Reading to all points to which we
ship—to resign to-night—some of them have sent in their resig-
273 nations—unless we arbitrarily advance their wages some forty-seven per cent and agree to limit the hours, and they have refused to consult with us, to confer with us, or arbitrate, or do anything else, simply saying that they have taken an oath and belong to an organization, and they are going to obey that organization. We can not tell what in the end the price of wages that may have to be paid under such circumstances, and it is utterly impracticable for us to go on, with any duty we

owe to our stockholders or to the public, and I will assume that it is axiomatic that the true interests of the public consists in every industry and every railroad earning a reasonable return on the money invested. The country can not be prosperous unless the railroads and the industries of the country are prosperous, and if in cases there are industries and railroads earning more than the measured standard of earnings, which is generally fixed by the rate of interest, then, of course, the public has a right to say that they are getting more than their share of the general prosperity; but in the case of the Reading Coal & Iron Company and the Reading Railroad, which I submit to you, I say that so long as we have not been able for a series of years to return anything to the majority of our stockholders—being limited, as I tell you, to paying four per cent and even less than only one per cent on twenty-eight millions of stock out of one hundred and forty millions—it is utterly impossible to reduce our rates without bankruptcy, and if a bankrupt company is a benefit to the public, then, of course, the problem is one that I can not and am not able to solve. I can only say that, with justice to the public, there is nobody connected with the Reading Coal & Iron Company or the Reading Railroad that wants anything but a fair return for the money invested. If we could be sure of four per cent—if we ever get up to that, I shall rejoice in my administration as having accomplished that which greater men than I have tried for thirty years.

Com'r CLEMENTS. To come back for the present to the question as to the manner in which to attain what you desire as a reasonable
274 rate of profit on coal, I want to ask you how many years since this percentage basis that we have been talking about and the distribution of cars on the basis of capacity of collieries became in vogue, was in practice?

Mr. BAER. I think about 1895 or 1896, but I am not sure about that. I am only speaking from hearsay about that.

Mr. SHEARN. January, 1896, was the year.

Mr. BAER. Was it?

Com'r CLEMENTS. Do the percentages now differ materially from what they were in the beginning in this practice of the distribution between the different roads?

Mr. BAER. Oh, the actual percentages of what we do do, as you will see by the returns, varies a great deal; for instance, for January, 1902, our percentage was only 18.50.

Com'r CLEMENTS. I mean the percentage fixed——

Mr. BAER. There has been no percentage; it has never been talked about or heard of in my administration since.

Com'r CLEMENTS. Your administration commenced when?

Mr. BAER. April, 1901.

Com'r CLEMENTS. Have they been altered from year to year or time to time or have they remained what they were in 1896?

Mr. BAER. There has been no change in what is called the percentage basis that I know of, but the actual tonnage has not conformed to the percentage basis, as, for instance, P. & R., the tonnage was 18.50 and in January the tonnage basis was 20.50——

Com'r CLEMENTS. Prior to 1900 did the actual transactions conform to the basis fixed?

Mr. BAER. No, sir.

Com'r CLEMENTS. Approximately?

Mr. BAER. Well, they approximated it within one or two per cent, I suppose; I can not give you those figures. I think you gave them yesterday, didn't you?

Mr. GOWEN. Mr. Shearn put them in evidence.

275 Mr. SHEARN. They are not in the record. I asked about the Reading only. The Reading Company, 1896, was 20.89 per cent; 1897, 20.02 per cent; 1898, 19.6; 1899, 20.32; 1900, 20.70; 1901, 19.60.

Com'r CLEMENTS. Has their been any material and substantial change in the actual development of collieries on the different roads during all that time?

Mr. BAER. No, except there has been a change of ownership. For example, you take the New York, Ont. & Western, ever since I know anything they have mined, oh, largely in excess of their percentage. You see March, 1902, the basis with the percentage on tonnage was 3.10, that is the basis, and they mined—the actual tonnage was 5.55. Well, in March, 1903, this last month, they mined 4.88 on their percentage basis; so if you pick any out at random, November, 1902, there it was 5.28 and the basis was 3.10; so here is another, December, 1902, 5.34; here is February, 4.55; May, 1902, 5.63; here is 10.43 in September, 1902, they mined 10.43 when the basis was 3.10. October was 7.34.

Com'r CLEMENTS. Can you tell us whether there is some arrangement by the carriers, these various carriers, by which the rates of all of them are arranged?

Mr. BAER. None that I know of; never heard of any such arrangement.

Com'r CLEMENTS. The rates are the same on all the different roads where they reach the same point, are they not?

Mr. BAER. I don't know. I really do not know. There are so few points that we reach in common that I am not able to say at all. I would have to refer you to the rates. There has never been any meeting or agreement about rates at all, in fixing rates, not that I know of.

Mr. SHEARN. Not even at the Lawyers' Club?

Mr. BAER. No. I never helped to fix the rate in my life. I do not know what they are except the general rate, at Port Reading, is 1.55 on anthracite coal, and I know ten years ago it was 1.85, so that it has fallen 30 cents a ton. I remember in 1892 the rate to New York

276 Harbor here was 1.85 and I know now it is 1.55. I only know that because I looked up the rates at the time of the Anthracite Coal Commission.

Com'r CLEMENTS. Don't you give attention to the important matters of rates in discussing it with your subordinates in the railroad companies?

Mr. BAER. There have been no change in rates since I have been in that I know; the schedules have been the same, and I have been so busy and occupied with other things.

Com'r CLEMENTS. However, they were fixed before you came in?

Mr. BAER. Yes; I do not know of any changes. There have been none that I know of since I have been president.

Com'r PROUTY. You said, Mr. Baer, all you wanted was to have the public pay such rates on coal and transportation that would yield a fair profit to the stockholders of your company?

Mr. BAER. Yes.

Com'r PROUTY. And you are entitled to that. Now there is one thing more you want? You want to be the judge yourself of what that fair thing is?

Mr. BAER. No; I tell you what that fair thing would be, and that is the normal rate of interest at which profits are to be fixed. Profits are fair in a railroad when the return on capital invested is equal to the prevailing rate of interest in a country.

Mr. SHEARN. Suppose the road is over-capitalized, Mr. Baer?

Mr. BAER. Then it will soon go into bankruptcy. I am not in favor of over-capitalizing. I want to say emphatically, and repeat what I said yesterday, there is nothing I look with more horror upon in this country than over-capitalization of industries and railroads. And I pride myself in a life of more than three score years that I have never been a party to anything of the kind, and I do not believe I will. I believe in honest capitalization and in honest values, both in industries and in rail-
277 roads, and if there was a false capitalization of these properties, then I would say the rule would be the return to the stockholders on what fairly represented under existing circumstances the value of the money invested in it.

Com'r PROUTY. Do you mean what it would cost to rebuild it?

Mr. BAER. No; because that would be fatal to the public. It would be impracticable to duplicate at any cost the systems of railroads in the East. The cost would be so enormous. If you take the pick of any of the big towns, take Jersey City over here; you could not at any reasonable cost duplicate these plants within the growth of these two cities growing up, you could not get the franchises and the privileges; the cost would be, oh, so enormous; as, for example, the cost of building the Reading Railway originally through the city of Reading, as returned, as shown on their books, was $56,000. The cost of building seven miles of railroad around the city of Reading, going across the river and coming back again, and going through the farms, has been over two million dollars.

Com'r PROUTY. What do you mean by the fair value of the property?

Mr. BAER. The fair value of property?

Com'r PROUTY. Of the railroad property.

Mr. BAER. I would say taking its cost and its accretions and whatever could fairly be charged as improvements to the property—I don't know how; I can not answer that question how to appraise the fair value of a railroad property. I would say the fair value represents its cost, but that if that cost includes any watered stock that the fair value would represent its cost less the watered stock.

Com'r PROUTY. That is to say, you would include what money has actually been invested in the land?

Mr. BAER. Actually invested; I would further inquire what, under conditions, had been the increase of property, so as to make the investment more profitable, as, for example, if we have a right of way in the

city of Philadelphia, as we have down to Willow street, the cos
278 is very little; it is worth many millions of dollars and would cos
twenty millions to replace under any conditions. Well, now, I should not say that the cost, the present value of that, was the origina cost, when it was built in the outskirts of a city over right of way tha we had acquired and over which, since '33, the city has opened streets, and it is now a built up city. But those are questions that, when you put them to me to figure, I don't believe any expert in the world could give a fast rule. Do you think they could—a hard and fast rule? I know of nothing more troublesome than market value. We know that is so when you call witnesses to testify in damage cases as to the market value of a farm. Nearly everybody has a different view of it, and I do not know that I would like to be called upon to testify to market value. I do not know of any more difficult problem, even under the rules of law, that we, as lawyers, prescribe to witnesses on the stand.

Com'r PROUTY. You say you are entitled to earn four per cent on the value of your property?

Mr BAER. Well, I say on the value of the property as represented by the securities to-day, asserting that the securities to-day have been honestly and squarely issued and represent actual property acquired and which to-day on any appraisal that would be made in gross or in detail would prove to be worth what the capitalization shows them to be.

Com'r PROUTY. What would you say to four per cent on the market value of those securities?

Mr. BAER. No; I do not agree to any such proposition, because we would do then what we have never done; you would have to give us—in order to do that—take the market value of the securities and pay four per cent—you would have to pay us—we would have to raise the rates to enable us to earn money. For example, we have some mortgages that were issued at a seven per cent rate and we have extended at 3.30, which is a very low rate of interest, and if you take the market value of our stocks to-day, you would find that we have at no time in the past, since the reorganization of the company in December, 1896, earned any such figure.

279 Com'r PROUTY. Mr. Baer, there are several different kinds of Reading stock on the market, are there not?

Mr. BAER. Yes, sir.

Com'r PROUTY. Which stock is it that may be said to fix the market value of your securities? Have you preferred stock?

Mr. BAER. We have first preferred, second preferred, and common stock. We have twenty-eight millions of first preferred, entitled to a dividend of four per cent; forty-two millions of second preferred, entitled to a dividend of four per cent; and we have seventy millions of common stock.

Com'r PROUTY. Now, at the time of your reorganization in 1896 or 1897, do you know what the value of that stock was, what the total value of that stock was on the basis of its market quotation?

Mr. BAER. I do not know. I can only tell you what the value is, based on the value of the property. As to what people would give at the time, I do not know.

Com'r PROUTY. Do you know how much the market value of that

stock increased from 1897—the highest point it touched in 1897, to the highest point it touched in 1902—all the different stocks of your company?

Mr. BAER. I can not tell you that. In general, the first preferences run—I remember they are issued in shares of fifty—the first preferences will run eighty-five to ninety per cent, the second preferences have been running about seventy, and the common has been running at twenty-eight to thirty-two or thirty-three, or whatever it may be.

Com'r PROUTY. How were those prices in 1897—what were the corresponding prices in 1897?

Mr. BAER. The preferences ranked fully as high. There was very little sold in the market, because it was security holders and bondholders in the reorganization the preferences were issued in payment of different classes of liabilities and adjustments and there was very little on the market, but that would not be—with deference to you—any fair rule. Here was a bankrupt company——

Com'r PROUTY. I was not suggesting what the fair rule would be. I was asking you.

280 Mr. BAER. I was wondering about it. It certainly would not be a fair rule.

Mr. SHEARN. Mr. Baer, you instanced this Willow-street right of way you have that cost you little or nothing, and which is now worth fifteen or sixteen millions. Why should the people buying coal pay you any interest on that great increase in value?

Mr. BAER. I suppose if John Jacob Astor or his father bought some property in the city of New York at a trifle, and now it has become very valuable, the present tenants should not pay any more rent for it than a reasonable rent on what Mr. Astor paid for it originally. Is that your proposition?

Mr. SHEARN. That is not my proposition at all. I should say it differs from my proposition very much. You said to Commissioner Prouty that you thought the fair value of a property ought to be taken into consideration in fixing a proper rate of interest, and that therefore a proper charge for coal, and you amended that by saying that where you had acquired property for little or nothing, and it had in the course of years enormously increased in value, you thought you ought to be permitted to charge more for coal in order to pay interest on stock, the value of which was based, not on what the property was worth when the stock was issued, but what it is worth after all these increases, with which you had nothing to do.

Mr. BAER. I said nothing of that kind. I said that stockholders are entitled to a fair return on their investment, measured by the value of the property. I did not say, you take the Willow-street property and appraise it at fifteen or twenty millions. I gave that as an illustration of how values increase. What proportion it is fair to take into account I do not know. I repeat the proposition, and if it is not a sound one it must be ruled out, that, believing as I do, that the capitalization of the Reading system is fair and honest, that the stockholders of the Reading Company have a right to get a reasonable return on all their invest-

281 ments, and that at least they ought to have four per cent on their stock, and that if the rate of freight on anthracite coal is materially reduced it will not be possible for the present management, at least, to earn a sum of money that will approach that. We have never done it

in the past, and I do not believe that under present conditions it wou
be possible for years to come to pay a dividend on seventy millions
this stock. The hope of my administration is that within the next ye
or two I may be able to pay four per cent on the first and second prefe
ence stocks. If I do that I think I shall have accomplished somethi
for the stockholders of the Reading system. Really I can say no mo
on that.

Mr. SHEARN. You spoke of an expense of two million dollars th
the railway had been put to in going around Reading.

Mr. BAER. I was giving an illustration——

Mr. SHEARN. And the enormous expense at Philadelphia.

Mr. BAER. Yes, sir.

Mr. SHEARN. What has that got to do with the price the Philadelph
& Reading Coal & Iron Company should charge consumers for coal?

Mr. BAER. I submit, gentlemen of the Commission, that I did n
use that illustration in reference to the price of coal. I was speaking
the rate of freight—was I not?—that we were entitled to charge for t
transportation of anthracite coal, and I cited the fact how expensive fro
year to year it is, both by reconstruction and new construction. He
is a new drawbridge to be built, to cost a half million, right here at yo
city, and there are new wharves and other things, by reason of th
development of population, which are constantly increasing. We a
putting down new tracks and getting new facilities, so that the railroa
expense in a thickly settled country like this is an ever-increasing on
and it is because of that that I suggested it as one reason why it was n
practicable to reduce the freight rate. I was not speaking of the pri
of the coal.

282 Mr. SHEARN. The rate of freight on anthracite coal is a me
name. It does not mean anything, does it, under your method
operation? The rate you get for transporting anthracite coal for th
Reading Coal & Iron Company is based entirely on what the Readi
Coal & Iron Company has left after it pays for the mining of the co
and the selling of the coal?

Mr. BAER. You are greatly mistaken. The Reading Coal & Iro
Company pays its freight on all the coal it transports, either directly
indirectly, through the consumer; that is to say, when we sell coal
New York we sell it f. o. b., and the coal & iron company has
pay the freight to the railroads. If we sell it from the mine the freigh
follows the cargo, you understand, and the purchaser, the consignee, pay
it there; but in every instance the coal & iron company, or the con
signees of the coal & iron company, pay full rates. There are n
rebates given the coal & iron company, even on this purchased coa
Argument was made—and I will state it on the basis of a thirty-five pe
cent. contract. Out of that thirty-five per cent. the coal & iron com
pany is able to pay the full freight rate and to pay all the costs of handlin
its coal—I mean of selling it—to deduct all the risks and still make
profit.

Mr. SHEARN. How does it do it?

Mr. BAER. How do they do it?

Mr. SHEARN. Yes, sir. Coal is only $4. There is only $1.40 left.

Mr. BAER. That is the error you make again in assuming that New
York is the world. At New York you sell a small quantity of coal a

$4, but at other places the freight rate is much lower and the price much higher. Now, the rate in New York, the f. o. b. price, fixes the price for all the coal, and in every month of the year we make a profit on the coal we purchase. Of course, if the coal & iron company sold all its coal in New York, instead of only its surplus there, at $4 it could not pay the railroad its freight rate; but suppose you have ninety per
283 cent. of the colliery capacity, which you sell at a large profit, and the other ten per cent. you have to sell in New York below the current price, say $4, then the coal & iron company would have only $1.40 with which to pay freight, but in some other places, locally, it will get a much greater profit; that thirty-five per cent. will be much more to them, and therefore it is the coal & iron company is able to pay full freights and still make make money.

Mr. SHEARN. You make the other localities pay the higher rate of freight to New York, then?

Mr. BAER. New York is favored because it is competitive. There is no question about that.

Mr. SHEARN. I say you make the other communities pay the high rate of freight to New York. The difference is made up out of the other communities, then. Is that correct?

Mr. BAER. Not necessarily correct. You can readily see if coal is sold along the line, the price of coal along the line, the charge of the railroad, the rate of freight is small; the distance is small, and the coal & iron company will make a profit on their coal. In a general way, in answer to your question, I will say that New York is the favored spot for long-haul anthracite coal; that you get your coal because of a lower freight rate proportionally and because of competitive conditions here at a lower price than they do in any other place. That is to your advantage. It is the natural advantage of location to which every community is entitled.

Mr. SHEARN. Well, then, when the return to the railroad company on coal shipped to New York is only $1.25 a ton, representing a loss of about twenty-five cents a ton to the coal & iron company, you make that up in an extra charge of freight to some other locality, like Philadelphia, Baltimore, or Washington?

Mr. BAER. We do not. We have regular lines of freight. The freight has nothing to do with it. The coal & iron company buys so many tons of coal, say a thousand tons of coal. It may sell nine hundred tons of that coal at a large profit. It may have a surplus of one
284 hundred tons, which it sells at a loss; but taking the whole transaction, it makes a profit on the thousand tons, and is able, therefore, to pay the full freight rate to the transportation point. That is the whole story.

Mr. SHEARN. Then it does not take out of the proceeds of the sale of coal at New York the funds for the payment of freight to the railway company, but where they are insufficient it reaches out and takes part of the proceeds of the sale of coal in other communities along the line—at Philadelphia, Baltimore, Washington, or Boston?

Mr. BAER. It buys the coal of the colliery. It must take all that coal. At the end of the month it sees what has been the commercial result of that purchase. It finds as the commercial result on all the coal

that it has made a profit—on all of it together—by which it is able to pay the freight and have a considerable sum in its treasury for itself to represent the reasonable profit it makes as a factor in selling the coal. Now, I can readily understand if, in point of fact, these transactions resulted in a loss to the coal & iron company that that might amount to a rebate, which would be unlawful, but in point of fact they do not. That is one of the things I think you have a right to inquire into. I am speaking positively, because I have the statement carefully made up, covering the period of time when these contracts began, because I was about to enter into a new contract, the first one I believe I had made under my administration, and before making it—I have not made it yet—before I went into it, I wanted to be certain that the commercial feature of it was satisfactory, and I directed the accounting officers to make up a careful statement by the month of the result to the coal & iron company of these purchase contracts, and I find that the comparatively small number we have—there are only about a million tons—that we made a profit after paying full freights to the railroad company since November 1st, 1901, of over $300,000, and there was a profit every month; $300,000 was after paying full freights and after taking out a reasonable share of the general expense of selling that coal.

285 Mr. SHEARN. When the price of coal at tide is as high as $4.50, the thirty-five per cent. only amounts to $1.58. Now, $4.50 was the price in April, 1901, and the price in April, 1902, and subsequent to April 1st, 1901, did the price go up or down?

Mr. BAER. In April, 1901, the price went up ten cents a ton.

Mr. SHEARN. And in April, 1900, the price was $4 a ton.

Mr. BAER. I beg to be excused from testifying to that period of time, because it was not under my administration and I only know in a general way. There are other people that ought to be called to testify to those figures.

Mr. SHEARN. Well, it is obvious to you, is it not, that even when coal is $4.50 a ton at tide water the coal & iron company loses money on these purchase contracts?

Mr. BAER. It is not obvious to me at all. Why?

Mr. SHEARN. The tariff rate is $1.55, is it not?

Mr. BAER. Yes, sir.

Mr. SHEARN. And thirty-five per cent. of $4.50 is $1.58; that leaves three cents margin to cover the cost of selling and to cover the cost of loading into the barges?

Mr. BAER. Oh, no; oh, no.

Mr. SHEARN. Well, there is a cost for loading into the barges, is there not?

Mr. BAER. $1.55; then you get a water rate when you begin to load into the barges, which is twenty-five cents.

Mr. SHEARN. No, sir; when the price of coal is $4.50——

Mr. BAER. The net return to the coal & iron company for the particular tons of coal sold in New York will be $1.58, and the rate will be $1.55, and there will be only three cents to the credit there, but if from that same colliery a lot of that coal is sold along the line where the freights are low and where coal commands a higher price, when you put that on the side of the ledger and strike a balance you will find that the coal & iron

company has made a profit on the transaction, just as any merchant
286 may have to sell some surplus product at less than cost, because out of the whole transaction he may have made money.

Mr. SHEARN. To return: I say there is $1.58 left to the Philadelphia & Reading Coal & Iron Company when the coal is $4.50 and paying sixty-five per cent to the mine owner.

Mr. BAER. Yes, sir.

Mr. SHEARN. Out of that $1.58, what items have to be deducted?

Mr. BAER. $1.55 for freight and whatever would be a fair proportion for the expense of selling that coal.

Mr. SHEARN. And also the cost of putting the coal on the barges?

Mr. BAER. The railroad freight covers that.

Mr. SHEARN. But who bears the expense of loading the coal from the cars into the barges?

Mr. BAER. It is part of the transportation.

Mr. SHEARN. Who pays it?

Mr. BAER. It is part of the transportation rate and the transportation company pays it.

Mr. SHEARN. That is included in the rate of $1.55?

Mr. BAER. Certainly.

Mr. SHEARN. Now, what other items are there to deduct?

Mr. BAER. I do not know, except the general expense—did not I explain that fully? I would say generally, in every instance, the freight and the fair proportion of the cost of selling the coal, plus whatever commercial risk there is involved in the solvency of the person to whom it is sold—those are the general items going to the debtor side.

Mr. SHEARN. But the coal & iron company also, you say, sets aside five cents a ton for depreciation?

Mr. BAER. That has nothing to do with that. That is after all these things are made up.

Mr. SHEARN. Does it not set aside five cents a ton?

Mr. BAER. Not on purchased coal, no, sir; certainly not. The five cents per ton on coal, I thought I explained, was a depreciation
287 of lands fund. In the mining of coal we are exhausting our capital. Every ton of coal taken out of the mines we own is so much capital taken away, and for the purpose of endeavoring to replace that in some way we take the small amount of five cents a ton on that. If we did not, at the end of fifty years, when these coal lands would be exhausted, there would be no principal representing the estate at all. We call that "the depletion of lands fund."

The CHAIRMAN. Pardon me, Mr. Baer. It covers the point when you say you do not take out that on the coal you purchase.

Mr. SHEARN. That covers it completely. Now, it has been testified here that the sales in the months of April, May, and June, when the prices are low, are very much larger than in the three following months, and that a very considerable proportion of the entire coal that is sold is sold during those three months, when prices are comparatively low—for instance, in 1900, when the price was $4, and in 1901, when it was $4.50.

Mr. BAER. I will have to refer you to Ruley's statistics on that. Generally, I will say that that is a mistake, that the largest quantity of coal is always sold in the winter months and not in the summer months,

regardless of price. My own observation and experience during the two years I have occupied the presidency leads me to say that emphatically.

Mr. SHEARN. The Philadelphia & Reading Coal & Iron Company does not make payment to the railway company for the transportation of purchased coal as other shippers would do, does it?

Mr. BAER. Why don't it?

Mr. SHEARN. For instance, so many thousand tons are shipped of purchased coal during the month of April. Does the Philadelphia & Reading Coal & Iron Company in the following month, or soon thereafter, make a payment to the railroad company?

Mr. BAER. Certainly.

Mr. SHEARN. Covering that freight?

Mr. BAER. Certainly.

288 Mr. SHEARN. Does it make the payment on the basis of the tariff price?

Mr. BAER. Certainly.

Mr. SHEARN. Or on the basis of what is actually left over?

Mr. BAER. No, sir; on the basis of that tariff price. It invariably pays full tariff rates.

Mr. SHEARN. You say it makes enough money out of the sale of line and other coal to make up the difference?

Mr. BAER. Yes, sir; and to make a reasonable profit.

Mr. SHEARN. Well, one of the reasons why it is able to do that is that the Reading Company makes large advances to it?

Mr. BAER. How large advances?

Mr. SHEARN. I understood you to say that the Reading Coal & Iron Company was indebted to the Reading Company in the sum of seventy-nine million dollars, on which it only charged one and one-eighth per cent interest?

Mr. BAER. I fully explained that. It represented the value of the property. There was only eight millions of stock and bonds. All indebtedness is held by the Reading Company as representing the actual value of the property, and when the Reading Coal & Iron Company makes any money that it can spare, it gives it so much interest—to the Reading Company; but the Reading Coal & Iron Company has its own capital.

Mr. SHEARN. But their operations would show a large deficit, would they not?

Mr. BAER. No.

Mr. SHEARN. I say the Reading Coal & Iron Company's operations would show a large deficit if you charged the prevailing rate of interest on this $79,000,000?

Mr. BAER. Undoubtedly. That is what I am complaining of. If we had to pay full interest on that debt, the Reading Coal & Iron Company would show a loss every year.

Mr. SHEARN. If the Reading Company that owns the stock of the railway company were not willing to forego three or four per cent
289 interest on this seventy-nine millions, the coal & iron company would not have the funds with which to make up these losses on freight to tide water?

Mr. CAMPBELL. I object to that. There is no evidence that there are losses to the fraction of a cent.

Mr. SHEARN. I do not think it is necessary to go over that again. It

has been testified to clearly. When coal is four dollars a ton there is only $1.40 left for transportation. You say you make that up out of your general business?

Mr. BAER. I did not.

Mr. SHEARN. What you get out of line freight and freight to other points?

Mr. BAER. I did not say that.

Mr. SHEARN. Let us have it right.

Com'r PROUTY. I understood you to say that, taking the average price, the Reading Coal & Iron Company receives for all its coal——

Mr. BAER. No; the purchased coal.

Com'r PROUTY. You do not distinguish the purchased coal?

Mr. BAER. We do mix it up.

Com'r PROUTY. Why, then, should it not be on all your coal?

Mr. BAER. I think you are right.

Com'r PROUTY. Taking the average price on all the coal you sell, you make a profit out of the coal you purchase?

Mr. BAER. Yes, sir.

Mr. CAMPBELL. The witness was testifying particularly as to purchased coal. When Mr. Baer testified that when he pays the producer the cost of the coal and pays the freight on the purchased coal and has sold this identical purchased coal, the result of the transaction is the profit, concerning which he has testified.

Com'r PROUTY. I did not so understand.

Mr. BAER. That is what I said distinctly. I will repeat it. We buy coal from a colliery. We take that coal and sell it. The price we
290 receive for the coal we sell of that colliery enables us at the end of the month to pay all freight, all selling expenses, and leaves us a profit on each transaction, that so every month we make a profit on purchased coal. That is what I mean.

Com'r PROUTY. That depends on the market in which you sell that coal?

Mr. BAER. Well, we sell it in different markets, as I explained. If we sold only in New York we would not net the freight rate; we would lose; but we do not.

The CHAIRMAN. It amounts to this: The Reading Coal & Iron Company as a seller and purchaser of coal is engaged in a profitable business?

Mr. BAER. That is it exactly.

Mr. SHEARN. So far as purchased coal is concerned?

The CHAIRMAN. Yes, sir.

Mr. SHEARN. But it appears that this purchased coal goes into a common fund of coal and is sold as so much Reading coal, and it was testified yesterday that there was no means of distinguishing between the purchased coal and the company coal. It was brought out very clearly yesterday.

Mr. GOWEN. That was not testified.

Mr. SHEARN. I would like to know whether the Philadelphia & Reading Coal & Iron Company would be able on its entire business as a seller of coal to pay the railway company, owned by the Reading Company, the full tariff rates for the transportation of coal if it were not for

the fact that the Reading Company advances it, or refrains from charging it, the usual rate of interest on the seventy-nine million dollars that the Reading Coal & Iron Company owes to the Reading Company. In other words, if a regular rate of interest were charged, would not the business of the Reading Coal & Iron Company be conducted at a loss every year—with a large deficit?

Mr. BAER. Probably it would, but that would not affect the profit made on the purchased coal in the least.

Mr. SHEARN. You say it costs you about $2 to mine your own coal and put it on the cars, as I understand. Is that correct?

291 Mr. BAER. Yes, sir; that is correct.

Mr. SHEARN. When you add to that cost of $2, $1.55, you have only five cents left, as I reckon it, with which to meet the cost of selling, the waste, and the cost of putting on board. Do you do a profitable business when you pay the tariff rate of $1.55, and coal is $4 a ton?

Mr. BAER. No; we can not sell——

The CHAIRMAN. That would be $3.55.

Mr. SHEARN. When they are selling at $4, there would be forty-five cents left.

Mr. BAER. I will say, under present conditions, if we had to sell domestic coal, prepared sizes, at $4, we would lose money. We would make no profit at all, because forty per cent. has to be sold at a lower figure.

Mr. SHEARN. When you sell coal at $4.25——

Mr. BAER. Can not you really make those calculations and arguments? You have got the facts. I am very anxious to get through here. I think those things can be amplified and you can argue it from the data you have.

Mr. SHEARN. I want the facts.

Mr. BAER. Then I give you the basis for all the facts.

Mr. SHEARN. You have just said that when the coal is $4 a ton you operate at a loss if you pay your full tariffs to the railway company.

Mr. BAER. I think we would.

Mr. SHEARN. Now, when coal is sold at $4.25 a ton, do you also operate at a loss, if you pay the full tariff to the railway?

Mr. CAMPBELL. Put the question fairly. Do you mean if all the coal is sold——

Mr. SHEARN. If prepared sizes are selling at $4.25 and smaller sizes at their proportion?

Mr. BAER. The error you make is in assuming that the New York price here in the harbor is the price elsewhere.

Mr. SHEARN. Here is a market for seven or eight millions a year.

292 Mr. BAER. It may be. All our coal is not sold here. There is only a relatively small proportion of it—not ten per cent of our total output is sold here, and I simply answer your question by saying that the basis you state in your question renders it impossible for me as a business man to answer it intelligently, because it leaves out too many factors.

Mr. CAMPBELL. I object to this line of questions. The witness can not be called upon to make computations.

Mr. SHEARN. You said that, in your opinion, in response to one of the Commissioner's questions—Com'r Prouty, I think—if you reduced

the price of coal you did not think it would make any difference in the consumption of coal.

Mr. BAER. That is my opinion. I have no further opinion to express about it.

Mr. SHEARN. Don't you think it would make any difference in the amount of coal bought by the class of people that have to buy coal by the pail or in very small quantities?

Mr. BAER. I only know that we honestly protected the people that bought by the pail last winter and saw in every way that they were given coal at a reasonable price, and I received written thanks from the authorities of Brooklyn and New York for fair dealing towards those people and the efforts we made to keep down the price of coal to charitable people.

Mr. SHEARN. I say, don't you think, Mr. Baer, that people would buy more coal if the price were cheaper?

Mr. BAER. I can not tell. I suppose poor people buy the coal that is necessary for their comfort without regard to price. If you live in a house, you want it reasonably warm. I can not tell whether they would be more saving or more wasteful. I presume if they could get it at a very low price, they would buy more.

Mr. SHEARN. You observed that same result, did you not, in March and April of this year? You said you had large quantities in storage that you could not dispose of in March, when the price was $5, but that it all went out immediately when the price was made $4.50 in April?

293 Mr. BAER. It did not go out.

Mr. SHEARN. The demand increased. Have you still got it in storage?

Mr. BAER. I suppose there are about four hundred thousand tons in storage.

Mr. SHEARN. Where is it stored?

Mr. BAER. Some of it at Port Richmond, some at Schuylkill Haven, and some at the Tamaqua yards.

Mr. SHEARN. That coal is all available to persons that wish to buy now at prevailing rate? It is available for immediate delivery, is it not?

Mr. BAER. No; that coal is not available for immediate delivery, because, I am free to say, that when I found it was not sold in March I directed that that coal should not be sold except in emergency, because I was afraid, from the unrest existing during the last three weeks in the coal regions, that we might have more trouble, and I desired to have a reasonable amount of coal on hand to supply ourselves and the public in case another such dire calamity overtook us. My policy will be, as far as possible, to get several million tons stored at different places, so that in any great calamity the public will be reasonably protected hereafter. I think it is a narrow policy—even if it does cost to do it—not to have coal on hand to meet a contingency such as that that overtook us last summer.

The CHAIRMAN. Pardon me, Mr. Baer, but I think you fully answered his question.

Mr. SHEARN. When did you first learn of this allotment agreement in 1896?

Mr. CAMPBELL. I object to the form of the question, because it implies that the parties have met together and entered into a formal agreement about this matter. The testimony discloses no such situation. The testimony of Mr. Baer discloses the fact that the parties in interest got together and ascertained a historical and physical fact, which was that the colleries existing throughout the the coal region possessed a capacity of an ascertained quota; that the location of these various colleries
294 was upon the lines of the various railroads in a certain proportion, and that it was ascertained—not agreed—it was ascertained as a fact that in accordance with these percentages the capacity of the colleries was ascertained; and his question is utterly unfair.

The CHAIRMAN. Mr. Shearn, it seems to me your question is objectionable in form. Ask him when he first learned of this arrangement for the distribution of the coal.

Mr. SHEARN. Well, I will ask that question.

Mr. BAER. At that time I was counsel for the receivers—Mr. Dickson and myself were counsel for the receivers—and I recollect that at a meeting of the receivers, at which I was present, something was said about having underrated the colliery capacity in our region.

The CHAIRMAN. He asks when you first learned of that arrangement.

Mr. BAER. I say I do not know. When it was, I do not know.

Mr. SHEARN. The receivership ended in 1896, did it not?

Mr. BAER. It did not end in 1896, because they were not discharged until long after.

Mr. SHEARN. Can you fix this time with reference to the reorganization?

Mr. BAER. The reorganization was December 1st, and it was long prior to that—December 1st, 1896; that is it took effect December 1st, 1896.

Mr. SHEARN. Do you recollect that you first heard of it February, 1896?

Mr. BAER. I can not say.

Mr. SHEARN. From whom did the information come?

Mr. BAER. I told you I first heard it talked about at a meeting of the receivers. When that was I do not know.

Mr. SHEARN. Who informed you that some kind of an arrangement or understanding had been made?

Mr. BAER. I was not informed at all. I was present at an incidental meeting of the receivers when the question of a fair percentage was talked about——

295 Mr. SHEARN. When did you learn what the respective percentages were for the different railroads?

Mr. BAER. I can not tell that. I suppose when I saw Ruley's reports—up to the time I was president, I was general counsel and attended the things assigned to me, and incidentally I learned some things, but the management of the Reading business was not with me, and I could not recollect what was other people's business and not mine.

Mr. SHEARN. You are aware that there was in January, 1896, a meeting of the presidents of these various railroad companies at which this matter was decided upon?

Mr. BAER. I do not know anything about it.

Mr. SHEARN. You have with you a table of percentages which you said represented this understanding.

Mr. CAMPBELL. Colliery capacity.

Mr. SHEARN. Will you let me see it?

Mr. BAER. I have the monthly reports of the anthracite coal tonnage for 1901, which are at your disposal. I took them off the files. I think they are from January, 1901, to March, 1903. I simply took them out of the files. I promised, I believe, to give the Commission the reports of the different companies. Here they are. [Producing papers.]

The CHAIRMAN. Those are the reports of the Reading Company?

Mr. BAER. The Reading Company and all the companies—the railway and the coal & iron company, with the appendix and everything appended to it.

Mr. CAMPBELL. Please mark that filed for identification in connection with Mr. Baer's testimony.

Mr. BAER. There are five reports of the Reading Railway Company together with the report of the coal & iron company.

Mr. SHEARN. I shall offer those reports in evidence and ask to have them marked.

The reports are marked "Exhibit No. 25."

Mr. SHEARN. I also offer these tables in evidence.

The CHAIRMAN. The tables can go in as one exhibit?

Mr. SHEARN. Yes, sir.

296 The CHAIRMAN. And the reports as one?

Mr. SHEARN. Yes, sir.

The reports are marked "Exhibit No. 26."

(These reports cover all the months from January, 1901 to March, 1903, excepting only the strike months of June, July, and August, 1902.)

Mr. SHEARN. Prior to November, 1900, you did your best to live up to that allotment, did you not?

Mr. BAER. I can not answer that. I was not in authority prior to 1900. I was giving only hearsay as to that.

Mr. SHEARN. Have you been present at any meeting when different allotments have been made?

Mr. BAER. No.

Mr. SHEARN. Do you know whether any meeting has been held when this agreement has been abrogated?

Mr. BAER. I have no knowledge on the subject.

Mr. SHEARN. Do you know whether there has been in effect an allotment agreement or percentage agreement since January 1st, 1901?

Mr. CAMPBELL. I object to the form of the question——

Mr. BAER. I know there has not been.

Mr. CAMPBELL. I object to the form of the question, designating this as an agreement.

Mr. SHEARN. You say Mr. Harris is connected with your system?

Mr. BAER. He was my predecessor in office.

Mr. SHEARN. Is he connected with the system now?

Mr. BAER. He is a director and member of the executive committee.

Mr. SHEARN. Well, Mr. Harris testified before the Industrial Commission in February, 1901, and was asked this question and made this answer:

"Don't you recognize that you have a certain percentage of the market and that you are not to exceed that percentage so as not to encroach on the supply the other roads shall take to market? Answer. Yes, sir."

Mr. BAER. Well, that is for him to say.

Mr. SHEARN. Is that a fact, or is it not a fact?

297 Mr. BAER. So far as I know it was not a fact. I do not believe it was a fact. I never heard of it before.

Mr. SHEARN. Mr. Harris was in a position to know?

Mr. BAER. He was president, and if he said that he is responsible for it, and I am not. I was not president at that time. I do not know what he said or thought.

Mr. SHEARN. You also testified yesterday, as I understood you, that there was competition between these companies in the business of selling coal?

Mr. BAER. Yes, sir.

Mr. SHEARN. Now, Mr. Harris being examined at this same time, February, 1901——

Mr. BAER. I shall have to object to that. Why should I be examined as to what Mr. Harris said?

Mr. SHEARN. I wish to refresh your recollection.

The CHAIRMAN. Can you refresh his recollection by reading from a book that somebody else testified so and so?

Mr. SHEARN. I think so. Mr. Kennedy asked Mr. Harris:

"If your company were to operate on the old lines of competition to get out as much as you can—to get as much of the market as you can—the price of coal would be cheaper to the consumer, would it not?"

"Answer. Probably; yes, sir."

Do you say, after hearing that testimony given in February, 1901, that at the time this testimony was given the companies were operating on a basis of competition?

Mr. BAER. I believe they were, notwithstanding what Mr. Harris said.

Mr. CAMPBELL. I object to this.

Mr. SHEARN. You testified yesterday, as I understood you, that there were no consultations held with Mr. Thomas or others to fix the price of coal at tide water?

Mr. BAER. I said I had no conversation with him since my administration. What my predecessors or other people did I do not know anything about. I am responsible from April 1st, 1901, when I took the presidency, but I am not responsible for what other people did before that, nor do I know anything about it. It was not my province to know?

298 Mr. SHEARN. You said that never in the history of these railroads had there been any agreement to fix the tonnage or the price?

Mr. BAER. I said I never had known of any. I do not know of any such agreement to fix the tonnage or price.

Mr. SHEARN. Mr. Thomas was also a witness in February, 1901, before the Industrial Commission and was asked this question——

Mr. CAMPBELL. I respectfully object to this sort of examination, undertaking to lug into this record extracts from a Congressional

investigation. It is utterly immaterial and incompetent. If the testimony of those witnesses is desired to be produced before this Commission, let him call them. Do not surreptitiously bring them.

Mr. SHEARN. There is nothing surreptitious about it.

Mr. CAMPBELL. In a legal sense it is.

Mr. SHEARN. This is the ninth volume of the Industrial Commission's report, page 554. (Referring to volume.)

Mr. CAMPBELL. It is secondary—it is tertiary.

The CHAIRMAN. Do you want to impeach Mr. Baer's testimony?

Mr. SHEARN. I have already disclaimed that. I want to refresh his recollection.

The CHAIRMAN. He has said that that was not within his knowledge.

Mr. SHEARN. I thought if I called his attention to what Mr. Thomas said it would refresh his recollection.

The CHAIRMAN. You are at liberty to show the fact to be otherwise, but does it show it to read what somebody else said on another occasion?

Mr. SHEARN. I think it would.

The CHAIRMAN. It seems to me you have pursued this particular line far enough.

Mr. SHEARN. This is the first question I have asked this morning governing the matter of consultation about prices. A great many questions were asked about that by the Commission yesterday, showing a considerable interest in the subject, and it seems to me I might
299 refresh Mr. Baer's recollection. He testifies that he is overwhelmed with the details of these companies and can not recollect them all.

Mr. BAER. But have not I a right to make this objection, when you say I am overwhelmed. I have not hesitated to testify to anything occuring during my administration, but going back of my administration and asking me to testify to things my predecessors said or did, about which I know nothing—I was not president ——

The CHAIRMAN. Ask another question, Mr. Shearn.

Mr. SHEARN. Mr. Thomas, in February, 1901, was asked by Mr. Kennedy, of the Industrial Commission, this question:

"Is there not a sort of connection in determining what the price shall be in New York or at tide water? Answer. No, I can not say there is any. There are consultations in regard to it."

Mr. CAMPBELL. I object to it.

Mr. SHEARN. Does that refresh your recollection, whether, since January, 1901, there has been any consultation?

Mr. BAER. It does not. I know nothing of such consultations; I was never present at one. Mr. Thomas does not say that I was there, and therefore anything he might say could not refresh my recollection.

Mr. SHEARN. When these independent operators were turned loose, as Mr. Sturges put it, in January, 1903, did that operation involve any profit to the railroad companies?

Mr. BAER. Any profit?

Mr. SHEARN. Yes, sir.

Mr. BAER. How do you mean?

Mr. SHEARN. Did the railroad companies make any profit out of the suspension of those contracts for three months?

Mr. BAER. No, certainly not; how could they?

Mr. SHEARN. The coal & iron company went through the form, so it was testified, of buying the coal from the independents at the breaker and selling it back to them at tide water.

300 Mr. CAMPBELL. I object to this for the reason that the testimony to which counsel refers discloses the fact that the papers he mentions are in writing. I object to Mr. Baer being called upon to disclose the contents of a written document, which we have refused to present for the time being.

The CHAIRMAN. I do not so understand the question. Repeat the question.

Mr. SHEARN. I will state the question. It was testified by Mr. Sturges that during January, February, and March, 1903, the coal & iron company went through the form of purchasing independent coal at the breaker and selling it back again to the miner at tide water. Now, I ask you whether there was any profit in those transactions to the railroad?

Mr. BAER. I do not know of any such transactions as you state. I never heard of it before.

Mr. SHEARN. Don't you know that the coal & iron co. did, during the suspension of those contracts, buy coal at the breakers and sell the same coal back to the independent miner at tide water?

Mr. BAER. No, I do not know anything of the kind. I have explained what that was. We suspended the contract for 90 days and allowed the colliery to sell their own coal.

Mr. SHEARN. Don't you know anything about such a transaction as buying coal from them and selling it back to them?

Mr. BAER. No. Under the contracts we have bought the coal; for the purpose of not destroying the original contracts, we have agreed to sell the coal back to them for three months, and they sold it to the public.

The CHAIRMAN. In effect, you suspended the contracts?

Mr. BAER. Yes, sir; but the form it took was not to abrogate the contracts.

Mr. SHEARN. You contracted to buy it from them at 65 per cent of the price at tide water?

Mr. BAER. Yes, sir.

Mr. SHEARN. At what price did you sell it back to them?

301 Mr. BAER. I can not tell that. Mr. Henderson, manager of the coal & iron company, you will have to ask for that. He made all those arrangements.

Mr. SHEARN. Was not 50 cents a ton——

Mr. BAER. I tell you the detail was not in my hands and I can not tell.

Mr. SHEARN. You do not know whether fifty cents a ton was paid by the independents to the coal & iron company for every ton for the privilege of having those contracts suspended?

Mr. BAER. I do not know what was paid, but I directed that the prices should be so that we should lose nothing.

The CHAIRMAN. Ask another question, Mr. Shearn.

Mr. SHEARN. That would be within the knowledge of Mr. Henderson?

Mr. BAER. Yes, sir.

Mr. SHEARN. These tables put in cover sales made in what territory, Mr. Baer?

Mr. BAER. Everywhere. Those are the total transportation.
Mr. SHEARN. The total transportation?
Mr. BAER. The total transportation. So I have always understood them.
Mr. SHEARN. Including line and tide water?
Mr. BAER. I think the total. I have always so understood.
Mr. SHEARN. That is all.

Com'r PROUTY. Mr. Baer, cases of this sort concern a great many people other than the complainant and defendants. There has been very little said in your examination about the reasonableness of this rate on coal, and I will sometime, before the case is closed, want to ask you some questions as to that. I would as soon do it at some subsequent stage of this hearing as to-day.

Mr. BAER. I would be glad if you would do that. I am very much pressed. As I said, there is a strike here in the harbor and I am very anxious to adjust it. I am very much pressed. I will be very glad to come at any time that will suit your convenience.

302 The CHAIRMAN. In view of that statement it seems fair that Mr. Baer be excused until some other session of the Commission.

Mr. SHEARN. Yes, sir.

The CHAIRMAN. We will take a recess until 2 o'clock.

At one o'clock p. m. the Commission took a recess until 2 o'clock p. m.

(Endorsed:) U. S. circuit court, southern dist. of New York. Filed July 1, 1903. John A. Shields, clerk.

303 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Answer of David G. Baird.

To the Honorable the Judges of the said Court:

David G. Baird, for his seperate answer to the petition of the Interstate Commerce Commission praying for an order requiring him to produce certain contracts, says:

First. This respondent denies the averments of said petition that at the time he declined to produce said contracts the said Interstate Commerce Commission was engaged in an inquiry into the management of the business of the common carriers, defendants in said proceeding, in order that it might keep itself informed as to the manner and method in which said business was conducted, and might obtain from such common carriers full and complete information necessary to enable it to perform such duty.

He avers, on the contrary, that said Commission was engaged
304 in the hearing of testimony on behalf of the complainant in a certain proceeding pending before said Commission, instituted by William Randolph Hearst, and that the only matters under investigation were the particular allegations made by the said William Randolph Hearst in his petition as to certain alleged unlawful practices of the defendants therein.

Second. This respondent further denies that the averments of said petition, as to what took place at the hearing on April 22, 1903, at the time a call was made for the production of said contracts, fully state the facts in connection therewith. This respondent did not decline to produce any contracts of the Lehigh Valley Coal Company relating to the purchase and transportation of anthracite coal. On the contrary, it appears from the stenographer's minutes of the proceedings before said Commission (page 190) that after counsel for the Lehigh Valley Railroad Company had stated that there were no contracts in existence, either of the Lehigh Valley Railroad Company or of the Lehigh Valley Coal Company relating to the transportation of anthracite coal, the following proceedings were had:

"The CHAIRMAN. I understand counsel to say that there was no such contract as described.

"Mr. SHEARN. He does not say that there are none for the purchase of coal, but declines to produce them. I ask that they be produced.

"The CHAIRMAN. You make a distinction therefore between contracts for the purchase of coal and the sale of coal?

"Mr. SHEARN. I accept, for the present, counsel's statement that there are no contracts for the transportation of anthracite coal entered into by the Lehigh Valley Railroad Company since January
305 1, 1901, but there are contracts for the purchase of anthracite coal entered into by the Lehigh Valley since January 1, 1901. There are between the Lehigh Valley Coal Company and the owners of the mines for the purchase of coal since January 1, 1901, and properly described in the subpœna, and I ask the court to make an order directing that they be produced.

"The CHAIRMAN. You claim that those contracts provide for the payment of a certain percentage of the price at tide water?

"Mr. SHEARN. Yes, sir."

It thus appears, and this respondent avers it to be a fact, that the only contracts which he declined to produce where those between the Lehigh Valley Coal Company and certain other miners and producers of anthracite coal providing for the purchase of their output, and designating the terms and conditions upon which such purchase was made. The Lehigh Valley Railroad Company was not a party to any of these contracts, and they contained no provision whatever relative to or bearing upon the rates to be charged or received by that company for transportation of the coal covered thereby.

In order that this honorable court may be fully advised as to the effect and purport of these contracts, respondent will submit at the hearing a copy of one of the same, the others conforming substantially to the terms thereof.

Third. The contracts which this respondent declined to produce had, it is respectfully submitted, no relation to any matter under investigation by said Commission or which could have lawfully or properly been under investigation by it, and were therefore wholly irrelevant and imma-
306 terial to any issues raised or that could properly be considered in said proceedings, and hence this respondent was justified in declining to produce them.

Fourth. The Lehigh Valley Coal Company, whose contracts this respondent was directed to produce, is a corporation created by and

existing under the laws of the Commonwealth of Pennsylvania. It was organized March 4, 1875, by merger and consolidation of the Luzerne Coal & Iron Co. and the Green Land Co., corporations created by and existing under the laws of the Commonwealth of Pennsylvania and has a capital stock of $1,000,000 and an outstanding bonded indebtedness of $19,970,000.

Under and by virtue of the express authority conferred by the statutes of the Commonwealth of Pennsylvania, the Lehigh Valley Railroad Company acquired and holds all its stock, but such acquisition and holding imposes upon said Lehigh Valley Railroad Company no greater responsibility for the acts of said Lehigh Valley Coal Company than is imposed upon or exists in the case or stockholders in corporations generally.

The said Lehigh Valley Coal Company by its charter is authorized to and has since its organization engaged in the business of mining, purchasing, and selling coal. Its business is wholly disassociated from that of transportation and its acts therefore can not be made the subject of investigation by the Interstate Commerce Commission, nor was it pretended or asserted that in the said proceeding before the Commission that honorable body had under consideration or investigation the acts or proceedings of said coal company.

The acts or contracts of that company relative to the business which by its charter it is authorized to carry on can not, this respondent is advised and respectfully submits, be used as evidence either for or
307 against the Lehigh Valley Railroad Company simply because of its ownership of the stock of the said Lehigh Valley Coal Company.

The respondent, therefore, submitting that the contracts which he declined to produce were not relevant or material to any issues before the Commission and that in refusing to produce the same he did not refuse to produce material documents or papers, prays that this petition be, as to him, dismissed.

And he will ever pray, &c.

W. G. BAIRD.

FRANCIS I. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
Counsel.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

David G. Baird, being duly sworn according to law, deposes and says that the above answer by him subscribed, so far as stated of his own knowledge is true, and so far as stated upon information derived from others he believes it to be true.

D. G. BAIRD.

Sworn and subscribed before me this 10th day of June, 1903.

[SEAL.] J. WM. ROBBINS, *Notary Public.*

My commission expires March 4, 1907.

(Endorsed:) U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

308 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

Separate answer of G. A. Richardson, secretary Erie Railroad Company

Now comes the respondent G. A. Richardson, and for answer to the petition of the Interstate Commerce Commission, without waiving objections to the form and sufficiency thereof, but insisting that such petition is insufficient in fact and law in form and substance, he alleges:

That he is a citizen of the United States, and one of the people of the United States, and as such he is entitled to the protection of this honorable court in the full enjoyment of his rights in this proceeding,
309 and in the proceeding before the Interstate Commerce Commission; that among the rights as a citizen, which he claims are secured to him by the Fourth, Fifth, and Tenth Amendments to the Constitution of the United States, and should be so protected, and the books, papers, liberty, and property of this respondent may not be taken from him without due process of law.

And further answering said complainant, this respondent alleges that the act of Congress creating the Interstate Commerce Commission, and the amendments thereto, do not vest any judicial powers in such Commission or give it the right to require this respondent to produce his contracts and private papers, or answer questions concerning the same as to a lawful business, save only in a case where the same shall be directly or indirectly relevant and pertinent upon some issue of which such Commission has jurisdiction; that the complaint of William Randolph Hearst, and the answers of the various railroad companies thereto, raise no issue of fact or law within the jurisdiction of the Interstate Commerce Commission, to which the contracts of this respondent by which he agrees to sell coal to purchasers thereof for sixty-five per cent of its tidewater value at the breakers' mouth in the State of Pennsylvania, are directly or indirectly relevant, material, or pertinent to the issues pending before said Commission upon the complaint; that the questions put to this respondent, and the direction that he produce contracts for the purchase or sale of coal at the breakers in the State of Pennsylvania, were not pertinent, material, or relevant, directly or indirectly, to any controversy pending before said Interstate Commerce Commission, over which said Interstate Commerce Commission then and there had jurisdiction; that said contracts are for the sale of coal wholly produced, mined
310 and sold within the State of Pennsylvania, and do not touch interstate commerce, and are not connected with any subject within the jurisdiction of the Interstate Commerce Commission.

Further answering, respondent respectfully deines that petitioner was exercising its authority or enforcing the provisions of the act to regulate commerce, or that it was material or relevant to the issues on trial that this respondent should have obeyed said Commission; but on the contrary, this respondent alleges that said Commission was beyond its jurisdiction in making the requirement it did of this respondent, which this respondent respectfully declined to obey.

And further answering the petition, this respondent alleges, that the proceeding before said Interstate Commerce Commission was conducted as if the same were a general investigation into all commerce, whether interstate commerce or not, and whether within the jurisdiction of said Commission or not, as if the purpose of such investigation was to ascertain the reasonable and just price for which coal should be sold at the breakers in Pennsylvania, or to the consumer in the city of New York, as will more fully appear by the examination of Mr. Edmonds, the sales agent of one of the coal companies, by Mr. Commissioner Prouty (pp. 737 to 741), to which special reference is hereby made as a part hereof; also by a reference to the examination of the same witness by Mr. Shearn (pp. 744–745); also by reference to the objections made by counsel to this line of testimony, and the rulings of the Commission thereon (pp. 745 to 756); also by a reference to the testimony of Mr. Olyphant and rulings thereon (pp. 1340–1352); also by a reference to the whole record before said Commission as a part hereof.

And further answering, this respondent alleges that he is the
311 secretary of the Erie Railroad Company, a corporation duly organized and existing; that he adopts and claims the benefit of the answer of such corporation this day filed so far as the same is applicable to him, and files this answer for the benefit of said Erie Railroad Company as an officer thereof.

And further answering, this respondent alleges that he was before said Commission at various times, ready and willing to answer all questions relevant or pertinent to the issues lawfully before it, that that occurred touching this respondent was the following, as appears from the stenographer's minutes of the proceedings before such commission (pp. 230 to 239):

Mr. SHEARN. I call upon the Erie Railroad Company. Is the secretary here?

Mr. BROWNELL. The secretary is not here. He was not called for to-day.

Mr. SHEARN. I call upon the Erie Railroad Company through its secretary, and upon the Hillside Coal & Iron Company through its secretary, and upon the Pennsylvania Coal Company through its secretary, and upon the Scranton Coal Company through its secretary, to produce all contracts for the purchase of anthracite coal entered into between each of those companies and third parties since January 1st, 1901.

Mr. BROWNELL. The secretary of the Erie Railroad Company is not in court, not having been summoned for to-day. Counsel said yesterday that the witnesess, naming them, would not be expected to be here until to-morrow. I will say for counsel's information that if he were here he would state that the Erie Railroad Company has entered into no contract
for the purchase of anthracite coal or the transportation of
312 anthracite coal except so far as such contracts for transportation are governed by the tariffs on file with the Interstate Commerce Commission since the dates mentioned by you. That answers your inquiry perhaps so far as the secretary of the Erie Railroad Company is concerned.

Mr. SHEARN. I do not understand the exception.

Mr. BROWNELL. You have asked for contracts. You have not designated whether you desired written contracts alone. I assumed that was all required.

Mr. SHEARN. Yes, sir.

Mr. BROWNELL. In order that there may be no question I stated that there has been transportation of coal by the Erie. It has not been done under special contracts, but under contracts, I suppose, implied in entering into the arrangements called for by the rates on file with the Interstate Commerce Commission. There has been no contracts for the purchase of anthracite coal.

Mr. SHEARN. Has there been a contract for the transportation of anthracite coal?

Mr. BROWNELL. Nothing further than is implied in the taking advantage of its tariff rates as filed with the Commission.

Mr. SHEARN. How about the contract with the Erie Railroad Company and the Delaware & Hudson Company?

Mr. BROWNELL. I know of none such, and the secretary would state that there is no such contract if he were here.

Mr. SHEARN. Now, coming to the Hillside Coal & Iron Company, has the Hillside Coal & Iron Company entered into any contracts for the transportation of anthracite coal since January, 1901?

Mr. BROWNELL. The secretary is not here. If he were he would state that the Hillside Coal & Iron Company is a corporation
313 under the laws of Pennsylvania, lawfully engaged in the purchase and handling of coal; is not engaging in the transportation of coal, and has at no time made contracts for transportation. It has in its legal capacity made purchases of coal from third parties, neither being parties to this proceeding.

Mr. SHEARN. The capital stock of the Hillside Coal & Iron Company is owned by what company?

Mr. BROWNELL. I do not know, nor may I presume, in the absence of the secretary, what he would testify to. In order to meet this question fairly I am willing to do so, but I do not wish to proceed as counsel and be chief witness in the case, so I must decline to give any testimony. So far as raising this question is concerned I am perfectly willing to waive the absence of the secretary.

Mr. SHEARN. Won't you send for the secretary and ask him to come over this afternoon?

Mr. BROWNELL. I do not think the secretary is available this afternoon. I thought you desired the raising of the question of the presence of the contracts or their production.

Mr. SHEARN. Perhaps we can get along as it is.

Mr. BROWNELL. I will state this fact, which is all I know, that the Hillside Coal & Iron Company has various stockholders living in various States, and that its capital stock is not entirely owned by the Erie Railroad Company.

Mr. SHEARN. You understand the vast majority is owned by the railroad company?

Mr. BROWNELL. My understanding is a large majority is.

Mr. SHEARN. How about contracts for purchase entered into between the Hillside and other companies since January 1, 1901?

314 Mr. BROWNELL. The secretary would state that the Hillside Company has entered into contract with outside third parties for the purchase of anthracite coal, but not bearing upon transportation, and no other contract.

Mr. SHEARN. Is one of those contracts with the Delaware and Hudson Company?

Mr. BROWNELL. Well, as to whom they are with—I will state that there are one or more contracts; I think six or eight.

Mr. SHEARN. Will you have the secretary present on Friday?

Mr. BROWNELL. I will, if it is possible.

Mr. SHEARN. There are to your knowledge contracts in existence for the purchase of anthracite coal entered into since January 1, 1901, between the Hillside Coal & Iron Company and third parties?

Mr. BROWNELL. Yes, sir; a number of contracts, solely for the purchase of coal.

Mr. SHEARN. And they are in the custody of the secretary of the Hillside Coal & Iron Company?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. And he has been duly subpœnaed to produce them?

Mr. BROWNELL. I should raise no question as to the correctness of the subpœna, but he was not subpœnaed to be present at this time. I will produce him.

Mr. SHEARN. Will you produce these contracts?

Mr. BROWNELL. You may assume for that purpose that Mr. Richardson, the secretary, is here, and counsel for the companies as well as counsel for the coal company object to the introduction in evidence of those contracts upon the ground stated by other respondent companies.

315 Mr. SHEARN. Then as to the contract between the Scranton Coal Company and third parties entered into since January 1, 1901——

Mr. BROWNELL. I have no knowledge of such a company. That is not an Erie company.

The CHAIRMAN. It would be better to have the secretary here to answer those questions.

Mr. SHEARN. Mr. Gowen and Mr. Ross have their contracts here.

Mr. BROWNELL. I have a number of the contracts you refer to here. I waive any question of Mr. Richardson's absence. But I can not be expected to act as a witness.

Mr. SHEARN. Have you with you any contracts for the purchase of anthracite coal entered into since January 1, 1901, between the Pennsylvania Coal Company and third parties?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. BROWNELL. On behalf of the secretary, in whose possession they legally are, I object to its introduction upon all of the grounds stated before.

Mr. SHEARN. Have you with you any of the contracts entered into by the Hillside Coal & Iron Company with third parties?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. You have them with you in court?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Delivered to you by the secretary of the Hillside Coal and Iron Company?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. BROWNELL. Assuming that they are in the possession of the secretary, or in my possession, I object to their being received in evidence upon the same grounds.

316 Mr. SHEARN. I ask the Commission to direct the secretary of the Hillside Coal & Iron Company and the secretary of the Pennsylvania Coal Company to produce those contracts. They are here in court.

The CHAIRMAN. Mr. Brownell, you are counsel for this Hillside Coal & Iron Company?

Mr. BROWNELL. For the Hillside Coal & Iron Company, yes, sir; I am counsel for that company.

The CHAIRMAN. Upon the statement you have just made that you have them in your possession, you are required to produce them in the case.

Mr. BROWNELL. And I respectfully decline to do so upon the grounds that have been stated by me, and upon the grounds stated by other counsel.

Com'r CLEMENTS. Were they brought here by the witness and turned over to you as counsel?

Mr. BROWNELL. They were turned over to me. He was not here because he was not to be called to-day.

Com'r CLEMENTS. They were brought here in obedience to a subpœna and placed in your hands?

Mr. BROWNELL. Yes, sir."

Wherefore, this respondent prays that the petition herein may be dismissed, and that he may be protected in his constitutional and statutory rights as a citizen of the United States.

S. A. RICHARDSON,
By GEO. F. BROWNELL,
His Atty.

(Endorsed:) U. S. circuit court, southern dist. of New York. Filed July 1, 1903. John A. Shields, clerk.

317 Circuit court of the United States of America, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

The answer of F. F. Chambers, individually and as treasurer and secretary of the Delaware, Lackawanna and Western Railroad Company.

Before the honorable judges of the circuit court of the United States for the southern district of New York.

F. F. Chambers, answering the petition of the Interstate Commerce Commission, says:

I.

318 That he is the secretary of the Delaware, Lackawanna and Western Railroad Company, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania.

That under and by virtue of its charter and the laws of the said Commonwealth of Pennsylvania, it is authorized, among other things, to own and operate railroads to transport persons and property; and to own and operate coal mines and property incident thereto, and to buy and sell coal; and to acquire and hold or guarantee stocks and bonds of other corporations.

II.

This respondent admits that on or about the 5th of November, 1902, William Randolph Hearst filed a petition and complaint before the Interstate Commerce Commission against the Delaware, Lackawanna and Western Railroad Company and other railroad companies. He also admits that an application on behalf of the complainant Hearst was made before the Interstate Commerce Commission for the issuance of subpœnas duces tecum, and that said subpœnas were served upon him individually and as treasurer and secretary of the Delaware, Lackawanna and Western Railroad Company, requiring him to appear before the Interstate Commerce Commission and bring with him all contracts for the purchase of anthracite coal entered into at any time since the first day of January, 1901, between the Delaware, Lackawanna and Western Railroad Company and any and all producers of anthracite coal or owners or operators of anthracite coal mines and all books of account pertaining thereto. He alleges, however, that the application made by the complainant before the Interstate Commerce Commission for the issuance of such subpœnas duces tecum was ex parte, and that no notice was given to him or to said corporation of said application, and that he had no opportunity to appear before said Interstate Commerce Commission and state his reasons why said subpœnas duces tecum should not be issued.

319 This respondent offers to produce for the inspection of the court the contracts made by the Delaware, Lackawanna and Western Railroad Company with persons other than the complainant for the purchase of coal, but he objects to and protests against the production of said contracts before said Commission at said hearing, and he alleges:

First. The Delaware, Lackawanna and Western Railroad Company is a Pennsylvania corporation and authorized by its charter and the laws of that Commonwealth, among other things, to buy and sell coal, has entered into five certain contracts with certain of the owners of coal mines along its line of railroad within the State of Pennsylvania for the purchase of certain of the coal from the owners thereof. None of the corporations or persons with whom this respondent railroad company has entered into contracts for the purchase of coal were parties to the hearing before this Commission. These third persons have rights in such contracts. They would have a right to object to the contracts being produced and made a part of a public record if they themselves were present before the Commission, and the fact that they are not parties before the Commission should not be taken advantage of by the Commission or by this court, and the private business of persons who are not before this Commission should not be inquired into without their consent.

Second. The said contracts were made by and between citizens of the Commonwealth of Pennsylvania. They are wholly local and domestic

contracts, made and performable within the Commonwealth of Pennsylvania, and in no wise bear upon or relate to commerce between the States or with foreign nations. That said contracts and the performance thereof are wholly of local cognizance and are without the jurisdiction of the Interstate Commerce Commission under the act to regulate com-
320 merce, and are wholly without the jurisdiction of the Congress of the United States, and therefore may not lawfully be inquired into here.

Third. That said contracts are irrelevant, incompetent, and immaterial to the inquiry before the said Interstate Commerce Commission on the complaint of said William Randolph Hearst, as will more fully appear by the testimony of this respondent in the record before this court.

III.

This respondent, individually and as treasurer and secretary, states that he is ready and willing to appear before the said Commission and to answer any questions within his knowledge which the Commission may determine to be material, bearing upon or relating to the relations of said company as a carrier of interstate traffic within the lawful jurisdiction of the said Interstate Commerce Commission; but this respondent respectfully objects to the inquiry of the said Commission into the business of said company of mining and selling coal, as herein stated, for the reason that it is not within the cognizance of said Commission to make such inquiry.

IV.

This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers upon the said Interstate Commerce Commission power to require by subpœna, or otherwise, the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents not directly and solely relating to matters under investigation, pursuant to the provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States and in derogation
321 of the right of this respondent and of the corporation of which he is an officer to have its private books and private affairs pertaining to the buying and selling of coal protected from unreasonable search or seizure.

And further, that the assumption of such power and authority on the part of the Congress of the United States is in violation of the tenth amendment to the Constitution, providing that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Wherefore, your respondent prays to be dismissed hence, and that the pending rule herein to show cause may be discharged as against him.

Respectfully submitted.

FRED. F. CHAMBERS, *Respondent.*

WALTER W. ROSS, *Counsel.*

STATE OF NEW YORK,
County of New York, ss:

F. F. Chambers, being duly sworn according to law, deposes and says that he is the respondent named in the foregoing answer; that he has read the same and knows the contents thereof; and that the facts therein stated are true.

FRED. F. CHAMBERS.

Sworn to before me this 10th day of June, 1903.

[SEAL.]

C. HOWARD,
Notary Public, N. Y. County.

(Endorsed:) U. S. circuit court, southern dist. of New York. Filed July 1, 1903. John A Shields, clerk.

322 Circuit court of the United States of America, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

The answer of O. C. Post, individually and as general auditor of the Delaware, Lackawanna and Western Railroad Company.

Before the honorable judges of the circuit court of the United States for the southern district of New York:

O. C. Post, answering the petition of the Interstate Commerce Commission, says:

I.

323 That he is the general auditor of the Delaware, Lackawanna and Western Railroad Company, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. That under and by virtue of its charter and the laws of the said Commonwealth of Pennsylvania, it is authorized, among other things, to own and operate railroads to transport persons and property; and to own and operate coal mines and property incident thereto, and to buy and sell coal; and to acquire and hold or guarantee stocks and bonds of other corporations.

II.

This respondent admits that on or about the 5th of November, 1902, William Randolph Hearst filed a petition and complaint before the Interstate Commerce Commission against the Delaware, Lackawanna and Western Railroad Company and other railroad companies.

This respondent admits that he was directed by this Commission to produce the vouchers showing the amounts paid by the Delaware, Lackawanna and Western Railroad Company for the coal purchased under five contracts and that under advice of counsel he declined to do so.

This respondent objects to and protests against the production of said vouchers before said Commission, and he alleges—

First. The Delaware, Lackawanna and Western Railroad Company is a Pennsylvania corporation and authorized by its charter and the laws of that Commonwealth, among other things, to buy and sell coal, has entered into five certain contracts with certain of the owners of coal mines along its line of railroad within the State of Pennsylvania for the purchase of certain of the coal from the owners thereof. None of the corporations or persons with whom this respondent railroad company had entered into contracts for the purchase of coal were parties to the hearing before this Commission. These third persons have rights in such contracts; they would have a right to object to the contracts being produced and
324 made a part of a public record if they themselves were present before the Commission, and the fact that they are not parties before the Commission should not be taken advantage of by the Commission or by this court, and the private business of persons who are not before this Commission should not be inquired into without their consent.

Second. The said contracts were made by and between citizens of the Commonwealth of Pennsylvania. They are wholly local and domestic contracts, made and performable within the Commonwealth of Pennsylvania, and in no wise bear upon or relate to commerce between the States or with foreign nations. That said contracts and the performance thereof are wholly of local cognizance and are without the jurisdiction of the Interstate Commerce Commission under the act to regulate commerce, and are wholly without the jurisdiction of the Congress of the United States, and therefore may not lawfully be inquired into here.

Third. That said contracts are irrelevant, incompetent, and immaterial to the inquiry before the said Interstate Commerce Commission on the complaint of said William Randolph Hearst, as will more fully appear by the testimony of this respondent in the record before this court.

III.

This respondent, individually and as general auditor, states that he is ready and willing to appear before the said Commission and to answer any questions within his knowledge which the Commission may determine to be material, bearing upon or relating to the relations of said company as a carrier of interstate traffic within the lawful jurisdiction of the said Interstate Commerce Commission, but this respondent respectfully
325 objects to the inquiry of the said Commission into the business of said company of mining and selling coal, as herein stated, for the reason that it is not within the cognizance of said Commission to make such inquiry.

IV.

This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers upon the said Interstate Commerce Commission power to require by subpœna or otherwise the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents not directly and solely relating to matters under investigation, pursuant to the

provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States and in derogation of the right of this respondent and of the corporation of which he is an officer to have its private books and private affairs pertaining to the buying and selling of coal protected from unreasonable search or seizure.

And further, that the assumption of such power and authority on the part of the Congress of the United States is in violation of the tenth amendment to the Constitution providing that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Wherefore your respondent prays to be dismissed hence, and that the pending rule herein to show cause may be discharged as against him.

Respectfully submitted.

O. C. POST, *Respondent.*

WALTER W. ROSS, *Counsel.*

326 STATE OF NEW YORK, *County of New York, ss:*

O. C. Post, being duly sworn according to law, deposes and says that he is the repondent named in the foregoing answer; that he has read the same and knows the contents thereof, and that the facts therein stated are true.

O. C. POST.

Sworn to before me this 10 day of June, 1903.

[SEAL.] C. HOWARD,
Notary Public, N. Y. County.

(Endorsed:) U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

327 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Separate answer of New York, Susquehanna & Western R. Co.

Now comes New York, Susquehanna & Western Railroad Company, and for answer to the petition of the petitioner in the above-entitled matter, without waiving its objections to the sufficiency thereof, but, instead, insisting that the same is wholly insufficient in matter and form, it does further state as an answer thereto:

That your respondent is a corporation duly organized and doing business as a common carrier of interstate commerce in the States of Pennsylvania and New Jersey, and as such it is entitled to the protection
328 of this honorable court in the full enjoyment of those rights which are secured to it by the Constitution and statutes of the United States in such case made and provided.

And this respondent, further answering said petition, alleges that no order ought to be made requiring the witnesses who declined to produce

contracts for the purchase of coal at the breakers' mouth in the State of Pennsylvania to produce such contracts, in that they have to do with the sale of coal produced, sold, and delivered in the State of Pennsylvania, and, therefore, coal which is not interstate commerce, and is not subject to the Constitution and statutes of the United States in such case made and provided; nor do said contracts directly or indirectly relate to or throw light upon any controversy before the Interstate Commerce Commission by reason of the complaint of William Randolph Hearst, under section 9 of the act to regulate commerce, or under sections 1, 2, 3, and 5 of the act to regulate commerce.

Further answering, respondent respectfully denies that petitioner was exercising its authority or enforcing the provisions of the act to regulate commerce, or that it was material or relevant to the issues on trial that this respondent should have obeyed said Commission; but, on the contrary, this respondent alleges that said Commission was beyond its jurisdiction in making the requirement it did of this respondent, which this respondent respectfully declined to obey.

And this respondent, further answering said petition, alleges that the proceeding pending before the Interstate Commerce Commission is not an investigation under section 12 of the act to regulate commerce, but is a controversy arising by reason of a complaint filed under section 9
329 of said act, complaining of violations of sections 1, 2, 3, and 5 of said act; that as to a controversy so brought before said Interstate Commerce Commission, said Interstate Commerce Commission is limited to legal evidence bearing directly or indirectly upon the issues to the controversy, such evidence being of the same nature and character as the evidence admissible in court on the trial of a suit for which such proceeding is made a substitute by section 9 of the act to regulate commerce, being the act creating said Interstate Commerce Commission.

And further answering said petition, this respondent alleges that said Interstate Commerce Commission erroneously required said witnesses to produce contracts and to answer concerning them, and to answer questions extraneous to the issues properly before it, because it does not consider itself bound by the rules of evidence or limited to the controversy before it, as will more fully appear by the entire testimony of Mr. Edmonds with reference to the sale of coal (pp. 703, 737), and as will more particularly appear by the examination of Mr. Edmonds with reference to the market price of coal by Mr. Commissioner Prouty (pp. 737 to 741), and as will more particularly appear by objections to evidence of this character by counsel and the ruling made thereon by the Commission (pp. 746 to 754, also pp. 755–756), to which especial reference is made as a part hereof; also by a reference to the testimony of Mr. Olyphant and rulings thereon (pp. 1340–1352); also by the whole record in the case, to which reference is made as a part hereof.

And this respondent, further answering, alleges that the testimony and exhibits to which reference is made in the petition herein will clearly show that little, if any, relevant testimony was given, and few, if
330 any, exhibits were put in evidence bearing upon the controversy before said Interstate Commerce Commission; but, on the contrary, nearly all of the exhibits put in evidence and nearly all of the testimony given were as to matters extraneous to the controversy before

said Commission and matters over which said Commission had no jurisdiction under the Constitution and statutes of the United States in such case made and provided.

Wherefore this respondent demands that the petitioner herein be dismissed, and that this court refuse to make the order prayed for by the petitioner.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY,
By GEO. F. BROWNELL,
Gen'l Solicitor.

(Endorsed:) U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

331 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Separate answer of Erie Railroad Company.

Now comes the respondent Erie Railroad Company, and for its answer to the petition of the Interstate Commerce Commission it alleges that it does not waive its objections to the sufficiency of such petition, but, instead, it insists that the same is wholly insufficient in matter and form; that it discloses no fact and no reason for denying to this respondent, a corporation duly organized, existing, and carrying on interstate commerce, the full protection of the Constitution and statutes of the United States in such cases made and provided.

332 That no order ought to be made requiring the witnesses who declined to produce contracts for the purchase of coal at the breakers' mouth in the State of Pennsylvania to produce such contracts, in that they have to do with the sale of coal produced, sold, and delivered in the State of Pennsylvania, and, therefore, coal which is not interstate commerce, and is not subject to the Constitution and statutes of the United States in such case made and provided; nor do said contracts directly or indirectly relate to or throw light upon any controversy before the Interstate Commerce Commission by reason of the complaint of William Randolph Hearst, under section 9 of the act to regulate commerce, or under sections 1, 2, 3, and 5 of the act to regulate commerce.

Further answering, respondent respectfully denies that petitioner was exercising its authority or enforcing the provisions of the act to regulate commerce, or that it was material or relevant to the issues on trial that this respondent should have obeyed said Commission; but, on the contrary, this respondent alleges that said Commission was beyond its jurisdiction in making the requirement it did of this respondent, which this respondent respectfully declined to obey.

And this respondent, further answering said petition, alleges that the proceeding pending before the Interstate Commerce Commission is not an investigation under section 12 of the act to regulate commerce, but it

is a controversy arising by reason of a complaint filed under section 9 of said act, complaining of violations of sections 1, 2, 3, and 5 of said act; that as to a controversy so brought before said Interstate Commerce Commission, said Interstate Commerce Commission is limited to legal evidence bearing directly or indirectly upon the issues to the con-
333 troversy, such evidence being of the same nature and character as the evidence admissible in court on the trial of a suit for which such proceeding is made a substitute by section 9 of the act to regulate commerce, being the act creating said Interstate Commerce Commission.

And further answering said petition, this respondent alleges that said Interstate Commerce Commission erroneously required said witnesses to produce contracts and to answer concerning them, and to answer questions extraneous to the issues properly before it, because it does not consider itself bound by the rules of evidence or limited to the controversy before it, as will more fully appear by the entire testimony of Mr. Edmonds with reference to the sale of coal (pp. 703 to 737), and as will more particularly appear by the examination of Mr. Edmonds with reference to the market price of coal by Mr. Commissioner Prouty (pp. 737 to 741), and as will more particularly appear by objections to evidence of this character by counsel, and the ruling made thereon by the Commission (pp. 746 to 754, also pp. 755–756), to which especial reference is made as a part hereof; also by a reference to the testimony of Mr. Olyphant and rulings thereon (pp. 1340–1352); also by the whole record, to which reference is hereby made as a part hereof.

And this respondent, further answering, alleges that the testimony and exhibits to which reference is made in the petition herein will clearly show that little, if any, relevant testimony was given and few, if any, exhibits were put in evidence bearing upon the controversy before said Interstate Commerce Commission; but, on the contrary, nearly all of the exhibits put in evidence and nearly all of the testimony given
334 were as to matters extraneous to the controversy before said Commission, and matters over which said Commission had no jurisdiction under the Constitution and statutes of the United States in such case made and provided.

And this respondent claims from this court protection in all the rights secured to it by the Constitution and statutes of the United States, and in particular that none of the witnesses shall be required to produce books or papers or give testimony concerning the matters and things not directly or indirectly relevant or material to the issues in the controversy now pending before the Interstate Commerce Commission, except in so far as the issues in such controversy shall be of such a character as to be within the jurisdiction of the Congress, the courts, and the Interstate Commerce Commission of the United States within the Constitution and statutes of the United States.

Wherefore this respondent demands that the petition herein be dismissed and that this court refuse to make the order prayed for by the petitioner.

ERIE RAILROAD COMPANY,
By GEO. F. BROWNELL,
Gen'l Solicitor.

(Endorsed:) U. S. circuit court, southern district of New York. Filed July 1, 1903. John A. Shields, clerk.

335 In the circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance of witnesses and the production of books, papers, and documents.

The separate answer of George O. Waterman, treasurer of the Lehigh & Wilkes-Barre Coal Company, in his own behalf and on behalf of the corporation of which he is an officer.

George O. Waterman, answering the petition of the Interstate Commerce Commission herein, represents and shows—

I. That he is the treasurer of the Lehigh & Wilkes-Barre Coal Company, a corporation created by and existing under the laws of the State of Pennsylvania, with power, among other things, "to purchase and hold coal lands in the county of Luzerne * * * to sell, mortgage, lease, or otherwise dispose of the same, or any part thereof," and to employ its capital in "mining, transporting to market, and vending coal" and other minerals, the product of its lands, * * * in erection of buildings and machinery for mining and manufacture, and such other objects as may be considered necessary for the prosecution of its said business.

II. This respondent admits the creation and existence of the petitioner as alleged, and also the exhibition to them of the petition and complaint of William Randolph Hearst against the various railroad com-
336 panies in the said petition mentioned. He admits the allegations of the petition in respect of the hearing of the said last-mentioned petition and complaint within the southern district of New York.

III.

1. This respondent further admits that the said Interstate Commerce Commission, on the application of the attorney for the said petitioner and complainant, awarded its writ of subpoena duces tecum to him directed and commanding him "to produce all contracts for the purchase or transportation of anthracite coal entered into since January 1st, 1901, between the Lehigh & Wilkes-Barre Coal Company and any and all producers of anthracite coal, or owners or operators of anthracite coal mines," as alleged in the said petition herein; but he is advised, and therefore alleges and charges, that the said writ of subpoena was improvidently awarded, in that neither the respondent nor the company of which he is an officer were parties to the proceedings then pending before the Interstate Commerce Commission, and that no opportunity was afforded him, or the said corporation, to show cause before the said Interstate Commerce Commission against the issuance and service of the said subpoena, nor to show that the said contracts are not documents relating to any matter then under investigation by the Commission, nor to show to the said Commission, as the truth and fact is, that it has no contracts whatsoever with any person whomsoever relating to the transportation of coal or any other commodity.

2. Further this respondent is advised, and so alleges and
337 charges, that Paragraph XIII of the rules and practice in causes and proceedings before the Commission, providing that when it

is sought to compel witnesses, not parties to the proceedings, to produce documentary evidence, the same may be awarded ex parte and without hearing, is unreasonable and improvident.

3. This respondent is further advised, and therefore alleges and charges, that the books, papers, tariffs, contracts, agreements, and documents, which the Commission has power under the act to regulate commerce to require to be produced are only and solely books, papers, tariffs, contracts, agreements, and documents of the carrying companies subject to the act to regulate commerce, or of consignors or consignees having contracts with such carriers where the subject-matter of such contracts are being inquired into, and that the said provisions of the said act of Congress confer no power whatsoever upon the Commission to search for or inquire into or expose the private papers or other papers of parties not directly concerned in matters committed to the said Commission.

4. This respondent, for himself and for his said company, admits that the proceedings at the hearing before the Interstate Commerce Commission on April 22nd, 1903, and set forth in folios 20 to 29, inclusive, referring to pages 212 to 230 of the stenographer's minutes of said proceedings—though not fully—are sufficiently set forth in the said petition of the Interstate Commerce Commission to this court.

5. This respondent is further advised, and therefore alleges and charges the fact to be, that the only showing before the Interstate Com-
338 merce Commission upon which the said writ of subpoena duces tecum was issued was the affidavit of Clarence J. Shearn, attorney for William Randolph Hearst, the petitioner and complainant, to the effect that he verily believed that all of the books, papers, and documents mentioned in the said application for a subpoena duces tecum would be of service in the determination of the case; that they contained material evidence necessary to the petitioner and complainant; that the contracts called for are ostensibly contracts for the purchase of anthracite coal from mine owners or operators upon a basis of a percentage, stated therein, of the price realized on the sale of coal at tide water and other points of distance, but that said contracts are in reality, as will appear when they are construed in the light of the evidence, necessary to the petitioner and complainant; that portation of anthracite coal from the mines to its destination, said rates appearing therefrom to be entirely different from the published tariffs of any of said railroad companies.

6. That during the hearing before the Interstate Commerce Commission there was under consideration the demand of the petitioner for the production by the Lehigh Valley Coal Company of certain coal-purchase contracts supposed to have been entered into by it with the certain miners and producers of anthracite coal whose operations were located on the line of the Lehigh Valley Railroad Company, whereupon a copy of one of said contracts was submitted to the consideration of the Commission for the purpose of determining their admissibility in evidence,
339 and thereupon the chairman of the Commission announced, as appears on page 193 of the stenographer's notes of the said hearing, the following:

"The CHAIRMAN. During the recess the Commission has briefly examined the blank contract which was submitted to our inspection by the courtesy of counsel. We understand from counsel that all the stock of

the Lehigh Valley Coal Company, which is denominated the buyer in this contract, is owned by the Lehigh Valley Railroad Company, and it appears from an inspection of the contract that the prices paid to the seller are certain percentages of the prices for which coal is sold at tide-water terminals. If the balance retained is less than the amount paid the railroad company, the coal company sustains a loss in the transaction, which is hardly to be assumed. However this may be, the facts alleged to be contained in these contracts may properly be shown, we think, and we also think that the contracts are competent evidence of the fact. We therefore overrule the objection and allow the contracts to be put in evidence."

And this respondent alleges that, in respect of the contracts which he has been called upon to produce, the said inferences so set forth in the opinion of the chairman of the Commission are unwarranted and unwarrantable; in fact, only a part of the coal sold by the Lehigh & Wilkes-Barre Coal Company reaches tide-water terminals; that in truth and in fact, owing to the divers markets to which this coal is consigned and the divers rates of freight to the said various markets, there remains
340 to the said coal company on all its transactions for the purchase of coal a large annual profit after paying full tariff rates to the railroad companies for transportation; that the inference of the Commission, expressed in the words following: "If the balance retained is less than the amount paid the railroad company, the coal company sustains a loss in the transaction," could not apply to the contracts of any of said companies, unless all of the coal purchased was all shipped to a point where the transportation rate exceeded the balance remaining of the proceeds after paying sixty-five per centum of the f. o. b. price to the seller under said contracts; and further, this respondent avers that, as appears by the undisputed testimony of George F. Baer, esq., hereinafter referred to, a large annual profit accrues to the said Lehigh & Wilkes-Barre Coal Company from the sale of the coal purchased under said contracts after the payment of full, regular tariff rates for transportation, notwithstanding the said inference of the said Commission in such opinion and of said Shearn in said affidavits.

7. This respondent is advised and believes, and therefore charges that it is the uncontradicted purport and effect of the testimony of George F. Baer, esq., the president of this respondent's company and of other corporations, who was called as a witness before the said Commission on behalf of the petitioner and complainant; that there is no foundation whatsoever in truth and in fact for the various allegations on which said subpœna duces tecum was issued; that neither in their inception nor in their operation nor effect do the contracts which this respondent is
341 called upon to produce, or either of them, in anywise relate to or bear upon any of the matters pending before the Commission under the said petition and complaint of said Hearst; that said contracts are not and will not be of service in the determination of said case; that they do not contain evidence material to the petitioner and complainant; that they are not in reality contracts fixing the rate of anthracite coal from the mines to destination, as is alleged by said Shearn in his said affidavit, but that they are, in truth and in fact, as they purport to be, bona fide contracts made in Pennsylvania solely for the uses and purposes

therein mentioned; that neither in their inception nor in their performance have they any relation whatsoever to the subject of transportation; that the subject matter thereof is confined to the sales and delivery of anthracite coal, produced within the Commonwealth of Pennsylvania, to be delivered there regardless of the ultimate market to which the coal may be shipped, and also regardless of the transportation charges thereon; that the said contracts do not purport in any degree to be dependent upon the rates of transportation paid, or to be paid; that in view of the character of said contracts, as shown by said testimony of George F. Baer, esq., they are wholly local and domestic contracts, made and performable wholly within the State of Pennsylvania, and that therefore they in no wise bear upon or relate to commerce between the States or with foreign nations; that said contracts and the performance thereof are wholly of local cognizance and are without the jurisdiction of the Interstate Commerce Commission under the act to regulate commerce, and are
342 wholly without the jurisdiction of the Congress of the United States and therefore may not lawfully be inquired into here. All of which will more fully and at large appear by reference to the stenographer's notes of the testimony of the said George F. Baer, esq., before the Commission, which is hereby referred to and made a part of this answer. And this respondent further shows that it is the general result of all the testimony so far adduced before the said Commission, that the said contracts are of the character, purport, operation, and effect in this paragraph set forth, and not otherwise.

8. This respondent, for himself and his said company, further shows that he is ready and willing to appear before the Commission and to answer any question within his knowledge which the Commission may determine to be material, bearing upon or relating to the relations of his said company as a shipper of interstate traffic with any of the respondent carriers in the proceeding pending before said Commission, and to produce any books, contracts, or other papers bearing upon or relating thereto; but this respondent respectfully objects to and protests against any order herein which may be construed by the Commission to require him, or any subordinate officer or agent of his company, to appear and testify concerning the private dealings of his said company as a merchant, either in respect of his mining, purchase, or sale of any commodity, for that the same are neither within the cognizance of the said Commission nor of the Congress of the United States.

This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers
343 upon the Commission power to require, by subpœna or otherwise, the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents, not directly and solely relating to matters under investigation, pursuant to the provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States, and in derogation of the right of this respondent, and of the corporation of which he is an officer, to have its private books and private affairs as a merchant protected from unreasonable search or seizure.

And further, that the assumption of such power and authority on the part of the Congress of the United States is in violation of the tenth

amendment to the Constitution providing that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

And thereupon this respondent prays to be dismissed hence, and that the pending rule herein may be discharged as against him.

Respectfully submitted.

G. O. WATERMAN, *Respondent.*

ROBERT W. DE FOREST,
ROBERT THORNE,
JOHN G. JOHNSON,
Of Counsel.

344 STATE OF NEW YORK,
County of New York, ss:

George O. Waterman, being duly sworn, says that he is the respondent named in and making the foregoing answer; that he has read the same and knows the contents thereof and the facts therein stated to be true of his own knowledge.

G. O. WATERMAN.

Sworn to before me this tenth day of June, A. D. 1903.

[SEAL.] JAMES COGAN,
Notary Public, New York County.

(Endorsed:) In the circuit court of the United States, southern district of New York. In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance of witnesses and the production of books, papers, and documents. Answer of George C. Waterman, secty. Lehigh and Wilkes-Barre Coal Company. De Forest Brothers, attys. for respondent, 30 Broad st., New York City. U. S. circuit court, southern district of New York. Filed Jul. 1, 1903. John A. Shields, clerk.

NEW YORK, N. Y., *April 21, 1903.*

345 The CHAIRMAN. Gentlemen, please give us your attention.

The Commission has assigned this time and place for hearing the case of William R. Hearst against the Philadelphia & Reading Railway Company and others. Are you ready to proceed?

Mr. SHEARN. I am ready, for the complainant.

The CHAIRMAN. I will call the names of the respondent companies with a view to ascertaining the appearances. You appear for the complainant, Mr. Shearn?

Mr. SHEARN. I appear for the complainant.

The chairman called the names of the respondent companies, and the following appearances were announced:

J. D. Campbell and Charles Heebner, for the Philadelphia & Reading Railway Company.

J. G. Johnson, Francis I. Gowen, and F. H. Janvier, for the Lehigh Valley Railroad Company.

W. W. Ross, for the Delaware, Lackawanna & Western Railroad Company.

De Forest Brothers and Robert Thorne, for the Central Railroad Company of New Jersey.

George F. Brownell and Adelbert Moot, for the Erie Railroad Company and the New York, Susquehanna & Western Railway Company.

346 J. B. Kerr, for the New York, Ontario & Western Railway Company.

David Wilcox and L. E. Carr, for the Delaware & Hudson Company.

The CHAIRMAN. Mr. Shearn, do you desire to make any preliminary statement?

Mr. SHEARN. If the Commission please, I think it would facilitate the progress of the proceeding if I should call first the names of the witnesses subpœnaed for to-day and ascertain whether they are present personally or by counsel, and whether they have produced the books and papers called for, in which event I shall be able to excuse certain of the witnesses until other days during the hearing.

The CHAIRMAN. Very well.

Mr. SHEARN. Mr. W. G. Brown, secretary of the Philadelphia & Reading Coal & Iron Company.

Mr. BROWN. Here.

Mr. SHEARN. Have you produced the coal purchase contract of the Philadelphia & Reading Coal & Iron Company for the time called for in the subpœna, Mr. Brown?

Mr. BROWN. Yes, sir.

Mr. SHEARN. W. A. Church, treasurer of the Philadelphia & Reading Coal & Iron Company.

Mr. CAMPBELL. Mr. Church is excused.

347 Mr. SHEARN. I excused him until Thursday, but simply want to know whether he will produce the papers called for.

Mr. CAMPBELL. Upon the order of the Commission he will produce anything.

Mr. SHEARN. I will say in regard to the witnesses of the Philadelphia & Reading Railway Company and the Philadelphia & Reading Coal & Iron Company, that I received a letter from Mr. Campbell stating that he accepted service of the subpœnas for all the witnesses. I thereupon wrote to Mr. Campbell that I would not require the production of the books of his company until Thursday of this week. I desire to know at this stage of the proceedings whether the books will be produced or not.

Mr. CAMPBELL. The books called for in the subpœna duces tecum will be at the order of the Commission in this room at the proper time. Whether they will be produced or not is a question that will be left for your honors to decide.

Mr. SHEARN. Mr. G. O. Waterman, treasurer of the Central Railroad of New Jersey and the Lehigh Coal Company.

Mr. DEFOREST. Mr. Waterman will come when called and produce the books called for.

Mr. SHEARN. Mr. G. M. Wilson, auditor of the Lehigh Valley Railroad Company.

348 Mr. JANVIER. Mr. Wilson is subpœnaed for the 23rd.

Mr. SHEARN. Yes; but Mr. Wilson informed the process server that he had charge of the books that the treasurer was called on to produce.

Mr. JANVIER. I presume that is correct.

Mr. SHEARN. Then, I will call Mr. Alderson, treasurer of the Lehigh Valley road.

Mr. JANVIER. Mr. Alderson is not here.

Mr. SHEARN. But he will be here?

Mr. JANVIER. Yes, sir.

Mr. SHEARN. I would like Mr. Alderson or Mr. Wilson here to-morrow. That is to say, if Mr. Wilson has the custody of the books, I should want Mr. Wilson here to-morrow, and if Mr. Alderson has the custody of the books, I would like Mr. Alderson here to-morrow and Mr. Wilson on the day stated in the subpœna.

Mr. JANVIER. I will arrange that hereafter.

Mr. SHEARN. Mr. J. W. Platten, treasurer of the Erie Railroad Company, the Hillside Coal & Iron Company, and the New York, Susquehanna & Western Railroad Company.

Mr. BROWNELL. Mr. Platten is subject to telephone call, and will have with him, so far as physically possible, the books called for in the subpœna.

Mr. SHEARN. Mr. Fred F. Chambers, treasurer of the Delaware, Lackawanna & Western Railroad Company.

349 Mr. Ross. Mr. Chambers will be within telephone call.

Mr. SHEARN. R. D. Rickard, treasurer of the New York, Ontario & Western Railway Company.

Mr. KERR. He will be here.

Mr. SHEARN. David G. Baird, secretary of the Lehigh Valley Railroad Company, and also of the coal company.

Mr. JANVIER. He is called for to-morrow and will be here.

Mr. SHEARN. The subpœna for the contracts calls for their production to-day, the 21st.

Mr. JANVIER. Mr. Baird is not here. He was called on short notice. He will be here to-morrow.

Mr. SHEARN. With the contracts?

Mr. JANVIER. The contracts will be in charge of Mr. Gowen, who represents us in this proceeding, and I presume they will be here.

Mr. SHEARN. Mr. G. A. Richardson, secretary of the Erie Railroad Company, the New York, Susquehanna & Western, the Pennsylvania Coal Company, and the Hillside Coal & Iron Company, to produce contracts.

Mr. BROWNELL. Mr. Richardson is suject to telephone call. I have in my possession the contracts referred to in the subpœna duces tecum.

Mr. SHEARN. Mr. Chambers, secretary of the Delaware, Lackawanna & Western, to produce contracts.

350 Mr. Ross. He has in his possession the contracts.

Mr. SHEARN. R. D. Rickard, secretary of the New York, Ontario & Western, and Elk Hill Coal & Iron Company to produce contracts.

Mr. KERR. He will produce them.

Mr. SHEARN. Is Mr. Charles Weston in court?

(No response.)

Mr. SHEARN. J. B. Hitchcock, G. C. Smith.

(No response.)

Mr. SHEARN. If the Commission please, I would like to state with reference to these contracts for which the subpœnas call, that I desire to offer them all in evidence to-day, and I wish those that have not been produced to be here at two o'clock this afternoon. I understand that counsel have most of them here. I should like to have those that are not here sent for.

Mr. BROWNELL. What papers are those?

Mr. SHEARN. The coal-purchase contracts; the contracts for the transportation of coal entered into since January, 1901.

The CHAIRMAN. I understood counsel to say in some instances, if not all, that they have the contracts in their possession here.

Mr. SHEARN. With two or three exceptions. The Lehigh
351 Valley contracts are not here, but I understand can be obtained within a reasonably short time.

If the Commission please, by way of a preliminary statement in the opening of this case——

Mr. CAMPBELL. If the gentleman will pardon me a moment, I have something to present for your honors' consideration which should probably antedate anything else. In the first place, Mr. Baer, as counsel well knows, is a pretty busy man. He is under an official subpœna to produce certain contracts, returnable to-day. The same writ was served upon the subordinate officials of the company who are the proper custodians of such documents, and those gentlemen are here. I have assumed that Mr. Baer's personal appearance in obedience to the exigency of this writ would not be required to-day. In addition, however, a personal subpœna has been served upon Mr. Baer and acknowledged, which is returnable to-morrow. I understand that various other gentlemen have had subpœnas served upon them, and it would seem to me—as the Commission is always disposed to do in such cases—that some consideration should be, and no doubt will be given to the convenience of these gentlemen in relation to their other engagements. Consequently I think counsel should make up his mind as speedily as he may the probable dates when these gentlemen will be required to testify, so that they can arrange their other business matters accordingly. I have no doubt counsel and
352 the Commission will take that into consideration.

I have, however, another matter to present which counsel is entitled to notice of. A personal subpœna was served on E. Jones, of Philadelphia, to appear on the 23rd. It is a matter of very sincere regret for many reasons that Mr. Jones will not be able to attend. I regret it on account of his infirmities. I regret it also on account of the great inconvenience to which we will be put if not able to secure, as we will not be, his personal attendance. It will be necessary, if counsel see fit to take his testimony, to supplement that of the other witnesses, that an order be made by the Commission for the taking of his testimony by deposition at some other time. I desire to warn the Commission and counsel that it is extremely doubtful if in his state of infirmity it will be possible for him to testify in the way that would be necessary for a gentleman in his position to testify, covering large and important matters running through a long series of years. He would undoubtedly be the best witness for us all. I am sorry to say he can not attend. I present a physician's certificate to confirm my statement.

Mr. SHEARN. In reference to the statement just made, it will certainly be my endeavor to accomodate the witnesses and counsel
353 in every possible way throughout the hearing and with that in view I have called the list of witnesses this morning and have arranged so far as has been in my power for the attendance of the other witnesses on other days of the hearing. For instance, Mr. Baer's subpœna is returnable on the 23rd and not on the 22nd, and if it appears that we shall not be ready to examine Mr. Baer by that date I will promptly notify his counsel, and we will arrange for his coming here at such time as will be convenient to him. With reference to the illness of Mr. Jones, I should assume that his duties have undoubtedly been carried on during his illness by someone who, while not as good a witness as Mr. Jones, would certainly be informed as to most matters as to which Mr. Jones would be informed. I do not know who that witness would be, but it is possible we could get along with his testimony and dispense with that of Mr. Jones, but if we could not and Mr. Jones is physically able, I should like to take his testimony by deposition. Will you inform me whom we could substitute?

Mr CAMPBELL. I have no doubt it would be best for us to substitute Mr. William H. White, the chief bookeeper, who is, in Mr. Jones' absense and in his presence in charge of all these things. If you will give him time to look up things that he can not carry in his head, I have no doubt his testimony will be quite as satisfactory to everybody as
354 that of Mr. Jones, although Mr. Jones would be a very much more valuable witness for us on account of his longer acquaintance with the history and traditions of our system.

Mr. SHEARN. Then for the present we will substitute Mr. White in the place of Mr. Jones.

The CHAIRMAN. Judge Campbell, I assume you will undertake to produce Mr. White at such time as his presence is desired?

Mr. CAMPBELL. Certainly.

Mr. SHEARN. We should like to have him present at the time Mr. Jones is called for.

Mr. CAMPBELL. Thursday?

Mr. SHEARN. Yes, sir.

Mr. CAMPBELL. You understand it is only a personal subpœna.

Mr. SHEARN. I understand that he will produce what Mr. Jones is called upon to produce?

Mr. CAMPBELL. He is not called on to produce anything.

Mr. SHEARN. May I ask whether the treasurer or controller has charge of the books?

Mr. CAMPBELL. There are certain books kept by the treasurer. The books the gentleman wants are in the hands of the controller and no doubt it will answer the gentleman's purpose if we have the treasurer, Mr. Church, respond to so much of the subpœna as applies to the papers in his office and Mr. White respond to so much of the subpœna
355 as applies to the matters that Mr. Church can not supply. Is that the idea?

Mr. SHEARN. I should say so.

Mr. CAMPBELL. I will probably ask you to postpone our examination a little as you go along so I can look up matters with Mr. White.

Mr. SHEARN. I will say now that I will excuse the production of books by the Lehigh Valley Railroad Company, the Lehigh Valley Coal Company, the Central Railroad Company of New Jersey, the Lehigh & Wilkes-Barre Coal Company until to-morrow, and the books of the Erie and its subordinate companies, say the Pennsylvania Coal Company and the Hillside Coal & Iron Company, until Thursday, and the books of the Reading Company, at any rate until Thursday, and perhaps until a later day, and all books of all the other companies until Friday. Now, if it is the pleasure of the Commission, I will briefly outline the nature of the case and some of the evidence and what we hope to accomplish by this proceeding.

During the coal strike that prevailed for so many months after the 9th day of May last, public attention became focussed upon the anthracite coal situation. There was sufficient to focus it. Prices of coal rose, as you recollect, at one time to thirty-six dollars a ton here at New York,
356 and schools were closed, factories were shut down, and there was general distress among the people, and that distress drew all eyes to the anthracite coal fields. The attention of the people had been drawn to those quarters a good many times before. There had been Congressional investigation. For instance, you will recollect, there was one in 1893, and after the taking of a great deal of testimony it was concluded and reported to Congress that a combination of the various anthracite coal carriers existed whereby the output was controlled, the rates of freight were maintained, and a common price for the sale of the commodity was maintained at various distributing centers. Nothing came of that report, however. At times attention was directed to the situation by legal proceedings. You will recollect the attempt to lease the Central Railroad of New Jersey and the Lehigh Valley to the Port Reading Railroad Company, organized in the interest of the old Philadelphia & Reading Railroad Company and how that came under judicial observation and attracted the attention of thoughtful men, particularly when a decree was made by Chancellor McGill, setting aside the lease of the Central Railroad of New Jersey to the Port Reading on the ground that it obviously was a great step in the direction of creating a monopoly in a necessity of life, and was an insult to the intelligence of any person to argue that the control of roads like the Central and
357 Lehigh by the Reading was not condemned by every principle of public policy. But very little came of that, because after the leases were declared void, things dropped back to the old shape and the Reading quietly bought up control of the stock of the Central of New Jersey and things went on much as they had at the time the complaint was made.

There was another outcry about the situation in 1896 and 1897 when the legislature of this State investigated this same subject, not very thoroughly, and made a report to the legislature agreeing with the findings of the old Congressional investigating committee of 1893, and agreeing with the findings of the chancery court of New Jersey, and agreeing with the popular understanding of the situation in the coal fields; but none of these different investigations really amounted to anything, because in a little while public attention was directed to other things, and the people did not until the strike really appreciate what this combination meant.

There had been other complaints and other grumblings that were fixed up by these companies. For instance, you will recollect the famous case of Coxe Brothers against the Lehigh Valley Railroad Company, where the rate situation became so acute that the railroad company was hailed into court and a decree made against it, fixing a price for the trans-
358 portation of anthracite very much below that which had prevailed. It was expected that a great deal would result from that decision. Something did result of benefit to the public, because the railroads made a voluntary concession in the rates; and another thing that happened was the satisfaction of Coxe Brothers, by the making of some private arrangement with them that discouraged Coxe Brothers from going into court and asking the court to enforce the finding of your Commission.

But, as I say, the thing that focused attention on this situation acutely was the coal strike and its attendant hardships. Upon investigating the situation, even the casual observer was struck by certain conspicuous and salient facts. He found, for instance, that the price at which coal was sold by all these different carriers and their subsidiary companies, for the same grade, at the same time, and at the same place was always the same. He found that the prices had been steadily soaring from 1895 until the time of the strike, representing an increase from about $3.12 a ton for stove coal to $5 a ton for stove coal, and with no apparent reason for this increase. It had not attracted general attention because it had come about in easy stages. The advances were made quietly, little by little, month by month, year by year, until the entire level of prices had been raised from that reasonable figure to the figure prevailing at the
359 time of the outbreak of the strike and prevailing to-day, which is unreasonable on its face, when the slightest investigation is made into the cost of mining, the cost of transportation, and the cost of handling, selling, and distributing coal.

On making some further investigation, even the casual observer was struck by the fact that access to the coal mines of Pennsylvania was absolutely supplied by the very companies that were in this alleged combination and in this business of selling coal, and that they furnished the only means of transporting coal from the anthracite regions to tide water and other points of distribution; that they not only furnished the only means of transporting coal from those regions to points where coal was to be used, but that they owned the source of supply and that it was divided up into proportions something as follows: The Reading controlling about forty-two per cent; the Central of New Jersey, seventeen per cent; the Lehigh, sixteen per cent; the D., L. & W., 6.55; the Erie, 5.18, and the rest scattered in small proportions between the Delaware & Hudson, the Pennsylvania, the New York, Susquehanna & Western, and the New York, Ontario & Western. In other words, he found that the entire supply of anthracite coal in Pennsylvania, over ninety-seven per cent of it was controlled by these carrier companies. That fur-
360 nished food for reflection. Then, on further consideration of the situation it was ascertained that the Reading, a great company which controlled forty-two per cent of the supply, owned the majority of the stock of the Central Railroad Company of New Jersey, which controlled seventeen per cent, thus vesting fifty-nine per cent of the entire coal supply under one management. He found also that the president, Mr. Baer, of the Philadelphia & Reading Railway Company, was

also president of the Philadelphia & Reading Coal & Iron Company and the Central Railroad Company of New Jersey, and of the Lehigh & Wilkes-Barre Coal Company, that did the coal business for the Central Railroad Company of New Jersey, and that he also acquired another distinction and had become president of the Temple Iron Company, to which I will advert later.

Further consideration developed the fact that the stock of the Erie Railroad Company was vested in three voting trustees, a conspicuous member of the trio being Mr. J. Pierrepont Morgan, and that the stock of the Reading Company and the control of the policy of that company were vested in a committee of trustees, another trio, of which Mr. J. Pierrepont Morgan was the conspicuous member.

On looking further you find a general interchange of directors between these various companies I have mentioned, and what might happen from a situation like that where the managing interests were all identi-
361 cal was apparent, I say, to even the casual observer. A further thing that struck attention was the fact that the freight rates were identical to the same point from distances enormously different. In other words, we would find one company carrying a ton of coal to tide water, a distance of two hundred and thirty-three miles, for $1.75, and another company only one hundred and nineteen miles away from tide water getting the same price, and it was perfectly fair when it was considered that these various companies were carrying from greatly diverse distances and all making the same rate at the point of destination, they must be doing this as a result of some understanding among themselves. Again, it was ascertained that the tonnage carried by the companies from year to year, with relation to one another, varied very little, that the percentages were so nearly the same during a great many years, although large sums of money had been spent developing the mines of some companies, and although mines of other companies had been given up and abandoned, yet year in and year out, in some mysterious way, the percentages carried by the railroads were so substantially the same as to excite certainly grave consideration and investigation.

Another situation that attracted attention was that, although the 97 per cent of the coal area and supply was owned by these railroad companies, about 32 per cent of the output was being produced by men sup-
362 posed to be independent; that in spite of the fact that so large a proportion was coming from independent mines there was no competition between the coal of the independents and the coal of the railroad companies, but both were sold at tide water and other common points at the same price, and that, by some process which will be developed later, as years went on the independence of these men had been completely blotted out and such pressure had been brought to bear upon them that they, with few exceptions, throughout the entire coal fields have turned over the products of their mines absolutely into the hands of these carrier companies for all future time, abandoning their say as to how much shall be turned out of the mines and abandoning their say as to how much their own product shall be sold for at tide water.

Lastly, it attracted attention to the fact that the rates for the transportation of this coal from the coal fields to tide water was disproportionate to the rates per ton per mile charged by these same railroads for other commodities, and by all other railroads in the United States for all

commodities for substantially the same length of haul—that there was a great disparity between the charges made for carrying anthracite coal and the charges made by these same companies and by other companies for carrying bituminous coal. The evidence will show that it is
363 carried at about half the rate charged for anthracite coal. We will show you that there is no substantial difference in the method of handling anthracite and bituminous coal; that there is nothing which warrants the charging of so much higher rate for anthracite, but that if there is any difference in the way it is handled, the difference would be the other way and the anthracite should be carried cheaper, because both these coals are loaded into the cars by gravity; both these coals come in coal trains to common points of destination in loads of enormous quantity and weight, and, arriving there, are unloaded into the barges by gravity, the only difference being that the bituminous coal will not slide out of the chutes and into the cars and barges as easily as the anthracite and therefore costs about two cents a ton more to put bituminous coal into the barges than anthracite. So if there were to be a difference based on the method of handling, anthracite coal should be handled more cheaply than bituminous.

Then we shall ask your attention to the prices prevailing on other carload commodity freight that must be handled in substantially the same way as these products I have mentioned, except that they are at a disadvantage as compared with coal—such as pig iron, sand, lime, cement, and other products of that kind. We found all of them being carried at vastly lower rates than anthracite coal. Now, all this, when
364 grouped together, led to the conclusion irresistably that there was a hard-and-fast combination between these principal coal-carrying companies whereby the output of coal was fixed, whereby the rates of transportation were fixed, and whereby the price at tide water was fixed; and we became convinced—my client became convinced—that the existence of that combination was the logical and natural cause for the enormous increase in the price of coal that has taken place in the last five or six years, costing the community, certainly, $100,000,000 a year more than fair and reasonable rates would have cost them for this product.

Mr. Hearst then sought to put in motion the law offices of this State, to the end that something might be done to remedy this condition, and there was no result. He then sought the United States district attorney and the Attorney-General of the United States, and produced such evidence as we have been able to gather and asked him to set in motion the machinery of the law, and while a report has been made to the Attorney-General at Washington embodying findings and results of this evidence gathered together and submitted to the United States district attorney, the finding has been, for some reason or other, buried at Washington for many months.

Then it was that Mr. Hearst turned to this form, recollecting
365 its nonpartisan character; recollecting something of its history; recollecting what it had to do with the institution of every proceeding that has taken place under the Sherman anti-trust law that has amounted to anything, and that it has had its initiative before this Commission; recollecting what happened in the beef merger case and in the Northern Pacific case, and we have come here and shall lay before this Commission the evidence we have gathered establishing the facts

that I have been discussing and establishing, I believe, the existence of a hard-and-fast combination between at least six of these coal carriers, whereby there is no competition in either the production, transportation, or sale of anthracite coal.

Now, then, the freight charges furnish the key to the situation, and our object first in bringing this matter of freight charges conspicuously before you is that we believe, when we satisfy you that the published tariff rate for the transportation of anthracite coal is unreasonable and is at least fifty cents a ton higher than the reasonable requirements of business would justify, and you make an order fixing the rate at the figure we shall suggest or at such other figure as seems just to you, you will have struck a vital blow at the existence of this combination, because the vast profits of the business come from the transportation of anthracite coal and the high prices that the railroads exact from the people for the
366 purchase of the product are made necessary by the high rates they charge for bringing the coal from their own fields to tide water.

A further distinct purpose in bringing this rate situation before you is that once you fix a rate beyond which they can not go, a rate that is a reasonable rate, these coal-purchase contracts that I shall call your attention to later on will vanish into thin air and competition will once more take place in the coal business; there will be a spur and stimulus to independent activity. And thus you have it in your power by the decree you make here to deprive this combination of its greatest strength, to clip its talons by lowering the published tariff charges for the transportation of anthracite coal from the fields to tide water.

This proceeding has three aspects, and the evidence will be directed to three different points, two of them distinctly commingled and all more or less commingled. We first charge that the published tariffs of these roads for the transportation of this product are unreasonable and excessive. In support of that we have gathered together carefully data from the files of your Commission and have them properly tabulated, so as to save weeks of time of this Commission, and will lay them before you as one of the bases of a finding that the rate is unreasonable.

367 We shall, secondly, direct your attention to the matter of discrimination in freight rates, one of the greatest evils, as everyone admits, in the existing railway situation, and one to meet which a law supposed to be stringent has recently been enacted. We believe that the evidence submitted to you will establish such a discrimination against persons who desire to carry on independently the business of mining and selling anthracite coal as to make it absolutely prohibitive, and some of the evidence on that subject will be as follows:

It will appear that the railroad companies, one and all, have entered into contract with the owners of independent coal mines whereby they take their product, paying them therefor 65 per cent of the price realized at tide water. That means that the owner of the coal at the mine, the miner, gets rid of his coal without any further responsibility or trouble and receives net sixty-five per cent of the price the coal brings at tide water. Well, that means, of course, as the stock of the coal company that makes the contract is owned by the railroad company and as its treasury is dominated and controlled by the treasurer of the railroad company, as they are one and the same, that the net result to the rail-

road company for the transportation of coal under these 65 per cent contracts is not more than 35 per cent and can not be more than
368 thirty-five per cent of the price realized at tide water. It has frequently happened, and within the time covered by our petition that coal has been sold at tide water for $4.00 a ton, for less than $4.00 a ton—considerably less. Take $4.00 a ton, 35 per cent of that would mean $1.40 that the railroad company would get for bringing a ton of coal to tide water; but if that coal was brought to Port Liberty, what was the published tariff charge for the transportation of similar coal to that same destination? Why, $1.75. In other words, a man who is genuinely independent and who brought his coal to the railroad company to have them take it to Port Liberty, New Jersey, would have to pay $1.75, whereas the man that is willing to barter away his independence and the control of his own property would have his coal transported for $1.40, a discrimination of 35 cents a ton, when anybody knows that a difference of 10 or 15 cents a ton is enough to put any man out of business.

But that is not all. It will appear that the railroad company carries on the business here of selling coal, in many instances having a sales agent, paid so much a ton on the price of the coal, the price varying from 10 to 15 or 20 cents for selling the coal. There is a further deduction from what the railroad company gets for bringing the coal, bringing
369 the net return down to $1.30 or $1.25, and that, mind you, not taking into consideration the cost of putting the coal on board at the trestle, not taking into consideration the waste in the coal between the breakers and the trestle, and not taking into consideration at all, all the other elements of the business, such as insurance, the waste of screening, and various other elements, which bring, in the event of the coal being $4.00 a ton at tide water, the revenue of the railroad company down to $1.25 for transporting the coal.

Now, there is not only that enormous difference of 50 cents against the independent who brings his coal to the same railroad company to go to this same point, but there is a further practical disadvantage to which he is put, because he has to sell his own coal and has to pay the 10, 15, or 20 cents commission at New York for selling the coal. He has to stand the waste at tide water and all these other elements of the business. Therefore you see that the prevalence of these 65 and 35 per cent contracts absolutely bars out the possibility of independent coal mining and therefore bars out the possibility of any competition in this business.

The third feature of the case to which we shall devote attention is the question of combination, and I may say that we propose to go
370 into that just as thoroughly as we may to develop all the facts that are at our disposal so that this Commission shall have it in its power, if it deems it wise, to certify its findings to the Attorney-General of the United States for such action as he deems proper to take.

The prevalence of those common contracts at once suggests that there must be some combination. Eliminating for a moment all the other factors I have enumerated at the outset, you have already asked yourself, undoubtedly, why are these railroad companies willing to transport this coal so much below the tariff price? Why are the coal companies owned by the railroad companies, if you treat them as independent entities,

willing to sustain a loss of at least 25 cents a ton, purchased from an independent and shipped under those contracts, which they do if they pay the railroad company the 35 per cent? They sustain a much greater loss if they pay the railroad company the published tariff. There can be no answer to that query other than that that is done for the purpose of preventing competition. It is done for the purpose of keeping independent coal out of the market as competitive coal. It is done for the purpose of giving these railroad companies the absolute say as to how much coal shall come out of every one of those mines. When you consider those contracts and when you
371 consider the outline of the history of this industry which I have alluded to, this conclusion is thrust upon you, that there is a combination. But it is not a mere matter of inference when you go a little deeper. When you consider what has been developed by the investigation made in these proceedings, you will find that it has been developed before legislative committees that there was a conference in 1896 between the presidents of all these companies, and a division of output was agreed upon, and in minute percentages. You will find that, as years went on, there developed, particularly in the Lackawanna region, where there are so many of these alleged independent operators, a great dissatisfaction with existing conditions, and that an attempt was made, in order to get reasonable and cheaper rates to tide water, to build a railroad themselves to take their own coal to tide water, and that these independents in this Lackawanna region, comprising men of great wealth and means, did incorporate and did procure rights of way nearly down to tide water, and did pledge their tonnage to this projected railroad company. It is clear, of course, that if that enterprise had succeeded there would have been competition, both in the transportation of coal and in the sale of coal at tide water. Let me call your attention to what happened in rela-
372 tion to that enterprise. Its most conspicuous backer was the firm of Simpson & Watkins, controlling a very large output of coal. The president of the Central Railroad Company of New Jersey and of the Lehigh and Wilkes-Barre and the Philadelphia & Reading Railway Company, Mr. Baer, and one or two others, went to Reading, Pennsylvania, having looked the situation over, and discovered a furnace incorporated at Reading under the name of the Temple Iron Company. He bought the charter of the Temple Iron Company, the corporation being capitalized at about $250,000, for $159,000, and then called together his friends and associates in the business and authorized a mortgage on this furnace of $15,000,000 and authorized an equal issue of stock, and did put out over three millions of stock and bonds of the company, which were used to what end? Why, to purchase the mines of Simpson & Watkins, the principal promoter of this independent route to tide water. Now, the way they managed that, in order to give these securities some value and in order at the same time to arrange for a proper distribution of the tonnage of these ten or eleven collieries among the several railroads, they executed with one another and with the Guaranty Trust Company of New York and the Temple Iron Company agreements whereby six of these rail-
373 road companies, the Philadelphia & Reading, the Central Railroad Company of New Jersey, the Lehigh, the Erie, the New York, Susquehanna & Western, and, I think, the Delaware, Lackawanna &

Western, whereby these six railroad companies guaranteed six per cent dividends on the stock of the Temple Iron Company and guaranteed payment of principal and interest upon these bonds. What was the effect of that? The practical effect of it, of course, was to wipe out this attempt at competition. The practical effect further was to vest control of these different collieries and the output of these different collieries in the hands of these six subsidiary competing railroads, and the legal effect of it is the establishment, to a certainty, of a combination and concert between the railroad companies mentioned. It does not lie in their mouths to say, there is nothing in common between us; we have no agreements in common; when there are produced in court the contracts with the Temple Iron Company and the Guaranty Trust Company, whereby they, in definite and fixed proportions, determined by the output during that year of the respective companies, guaranteed the payment of the dividends on the stock and the payment of principal and interest on the bonds of the Temple Iron Company. That evidence we
374 believe to be of great force and weight, not only from a practical point of view, but from a legal point of view.

Now, then, in addition to that attempt—and successful attempt to throttle competition in this business—there was another attempt, which we intend to lay before you, that followed on the heels of that. There were all of these independents who were not taken care of since Simpson & Watkins left them in the lurch. They got together and did not give up entirely this project of getting an independent railroad, but planned a route over the old Delaware & Hudson Canal bed to Rondout and procured the Pennsylvania Coal Company, then an independent company, and one of enormous resources and which owned a small road operating from its mines to Hawley or Lackawaxen—the Erie & Wyoming Valley. They entered into an arrangement with the Pennsylvania Coal Company by which they agreed to pledge all tonnage to the Erie & Wyoming Valley or the new railroad when built, if the Pennsylvania Coal Company would undertake the construction of an independent line to tide water. They did undertake it. The charter was granted for the Delaware Valley & Kingston Railroad. It was fought before our board of railroad commissioners by the companies in this combination, but
375 unsuccessfully. Beaten in the courts they resorted to the same tactics that had before been used by them. The Erie Railroad Company was bought, body and soul, by J. Pierrepont Morgan, who at once transferred it at a profit of over three million dollars to himself and the Erie Railroad Company, of which he was one of the voting trustees. That was the end of the other and the last attempt at independent action in bringing anthracite coal to tide water.

There remained some of these independents to deal with, however, and a conference was held between them and representatives of these companies at New York, and these 65 and 35 per cent contracts were entered into, the previous contracts entered into in 1891 or 1892 for seven years having expired and having dragged along without being renewed in the interim, being at the rate of 60 and 40 per cent, respectively. At a conference between the railroad officers and the remaining independents, the new form of contracts I have adverted to were entered into and have been in force since, except for a temporary suspension at the end of the coal

strike, when conditions here furnished another striking evidence of how prices are controlled when the alleged independents were marketing their coal here in New York and the market value of coal, irrespective
376 of combination, is $12 a ton, and the company coal was being sold for $5, or such parts of it as we have been able to locate so far.

Now, all those facts marshaled together, we believe, present an irresistible case of combination in restraint of interstate traffic, which is within the purview of the Sherman anti trust law, and the law under which your body was organized, not only confers upon you the power, but imposes upon you the duty of investigating the conduct of the business of common carriers. We ask you to make such an investigation here, and I am sure it will be a thorough one.

In presenting the proof, I beg of you to be as patient and indulgent as you may be under the circumstances, and to bear in mind that all my witnesses are hostile witnesses, that, irrespective of the proof I can offer taken from the records on file with you, the tariffs on file with you, the contracts that I have alluded to, must come out of the mouths of hostile witnesses, and that the evidence of what these companies actually receive for transporting coal to tide-water has got to come out of the books in their custody and kept by them. I mention that so that I may be
377 sure to command your patience and indulgence as the difficulties of the case confront you.

I shall first offer in evidence a series of tables compiled from the tariff sheets on file with your Commission by these various railroad companies mentioned on anthracite coal, bituminous coal, and various other products, comprising distances in one table from 1 to 149 miles, in the next from 150 to 199 miles, in the next from 200 to 249 miles, and so on up, covering the various group distances, comprising the principal traffic in this product, and for the convenience of the Commission and counsel I have had these printed and will ask the secretary to hand a copy of each to each member of the Commission.

Mr. CAMPBELL. Before these go in, I want to look at them. I want to know what the character of them is, where they come from, and who made them.

Mr. SHEARN. To be sure. Here they are [hands papers to Mr. Campbell]. I will say for the information of counsel that these are certified by the secretary of the Commission.

Mr. CAMPBELL. Does he certify that they are prepared from the rate sheets and files of the Commission?
378 Mr. SHEARN. Yes, sir.

Mr. BROWNELL. There are eight tables here.

Mr. SHEARN. Yes, sir.

Mr. BROWNELL. The certificate of Mr. Moseley is that the rates given in Table No. 1 on anthracite and bituminous coal are the present and existing rates on file. Is there another certificate?

Mr. SHEARN. There is not. This is all bound together and on the first page is Table No. 1. It was evidently Mr. Moseley's idea that the whole thing was Table No. 1. If there is any doubt about it I shall, by to-morrow, obtain a certificate covering each table, but his certificate was undoubtedly intended to cover them all.

Mr. BROWNELL. Do you offer this table as testimony?

Mr. SHEARN. I am going to put a witness on the stand and prove the correctness of the computations. We have made a part of our petition the various tariff sheets on file at Washington and have referred to them in our petition. Those, of course, are always at the disposal of the
379 Commission. These figures are compilations from them and extracts from them that will be properly proved by witnesses, and then I shall offer these tables in evidence. Counsel are now examining them. When they get through I will put the witness on the stand.

The CHAIRMAN. The Commission desire to say for the information of counsel that some other matters require our attention to-day. Counsel are in attendance here from Chicago and desire to be heard, and for that reason we will take a recess at an earlier hour than usual. We will take a recess now until two o'clock this afternoon.

At 12.30 o'clock p. m. the Commission took a recess until 2 o'clock.

380 AFTER RECESS.

2 o'clock p. m.

The CHAIRMAN. Mr. Shearn, we are ready to proceed.

Mr. SHEARN. If the Commission please, I will offer in evidence all of the original tariff schedules filed by the carriers whose name' are mention' on this Table No. 1 which I shall ask you to mark for identification, the same being the last one styled and in force, for the commodities named in this schedule, from the points to the points named on the 13th day of February, 1903. As you are aware, those tariff sheets comprehend several hundred separate sheets and papers, and I presume they may be considered in evidence and before the court without being physically presented, as has been the case in other instances.

Mr. CAMPBELL. You mean the tariff sheets on file with the Commission may be considered in evidence without their production?

The CHAIRMAN. You mean the tariffs filed with the Commission under the statute?

Mr. SHEARN. Yes, sir.

381 The CHAIRMAN. For the transportation of coal from the anthracite coal regions to tide water and other points?

Mr. SHEARN. Yes, sir; and other commodities named in Table A. Then if there is occasion to refer to any original, we can do so.

Mr. KERR. Do you propose to refer to tariffs of other companies?

Mr. SHEARN. Oh, yes; we have tariffs also compiled in this table and I desire to offer those in evidence also, filed by the various other railroad companies whose names are mentioned in this Table No. 1, and I ask to have all those original tariff sheets considered in evidence for the purpose of reference. Do I understand that they may be considered in evidence?

The CHAIRMAN. You first propose to put in proof the tariffs of the roads named and between the points and of the dates appearing in Table No. 1 of this exhibit you have.

Mr. SHEARN. Yes, sir; for all the roads mentioned on all commodities mentioned and from the points to the points mentioned, all of them being on file with your Commission at Washington.

The CHAIRMAN. The tariffs referred to in Table No. 1, are what tariffs?

382 Mr. SHEARN. They are the last tariffs filed by these respective carriers and were in force on the day on which the certificate of the secretary of the Commission was attached to these tables, to wit, February 13, 1903.

The CHAIRMAN. What are the other tables?

Mr. SHEARN. I also, as I have stated, offer and ask to have considered in evidence the tariff sheets filed by all the carriers other than the defendant carriers whose names are mentioned in Table A, which has been handed to the Commission, on the commodities therein named from the points and to the points therein named.

Mr. CAMPBELL. What is Table A?

Mr. SHEARN. I call this Table No. 1, consisting of eight sheets. This exhibit, consisting of these eight sheets fastened together, was sent to the secretary together with the original copy that had been made and compared by the secretary with the originals on file and by him certified to be correct copies of the original tables on file. In making out his certificate, he observed that the table was headed "Table No. 1," but apparently did not observe that although the document is one document, there are eight pages of it. If there is any question
383 about it, of course I will have his supplemental certificate sent here.

Mr. CAMPBELL. It has been so inexpertly prepared I think we better have Mr. Moseley's certificate.

Commissioner PROUTY. I understand that what you want to do is to introduce the tariffs?

Mr. SHEARN. The original tariffs.

Com'r PROUTY. You do not depend upon the certificate of the secretary?

Mr. SHEARN. Not at all.

Mr. CARR. All the original tariffs mentioned in this paper?

Mr. SHEARN. Yes, sir.

Mr. CARR. I call the attention of the Commission to the fact that the complaint here is in regard to the unreasonableness of rates to tide-water points, and it is a matter of common knowledge that there may be some wide differences existing as to tariffs to other points, and those to tide-water points, and there are many of those instances in these tables, and if we are to enter into an explanation of all the differences arising that way this hearing will be interminable.

384 Mr. SHEARN. I now offer in evidence so much of Table No. 1, comprising eight sheets, as states the tariffs on file by the railroads therein named on the commodities therein named, from the points named to the points named, without offering at this time the computations of the number of miles or the computations of the rate per ton per mile, and I hand up the table with the certificate of the secretary attached.

The CHAIRMAN. Of course all the tariffs the carriers file in compliance with the statute will properly be regarded as in evidence for either party to refer to for the purpose of comparison or otherwise, but at some other time you should communicate to counsel the ones to which you intend to refer or on which you rely, so that they may have opportunity to make any explanation they desire.

Mr. SHEARN. The ones on which I intend to rely are those set forth in these tables.

The CHAIRMAN. And you call these eight sheets Table No. 1?

Mr. SHEARN. Table No. 1.

Mr. MOOT. I do not see anything on the table that shows us what particular rate sheet it is based on. I suppose a great many rate sheets are filed with the Commission, and it is pretty difficult to tell from
385 the table, as I look at it, what it is really based on.

The CHAIRMAN. I understood counsel to say that these are the rates shown by tariffs on file on the 13th of February.

Mr. SHEARN. Yes, sir; February 13th, 1903.

Mr. CAMPBELL. I would like to have the secretary read at this point the exact form of certificate signed by Mr. Moseley. I want to know what he certifies to with a view to making some suggestions to the Commission.

The assistant secretary read the certificate, as follows:

"I, Edward A. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that the rates given in Table No. 1, hereto attached, on anthracite and bituminous coal and other commodities are the present existing rates, as shown by tariffs on file with the said Interstate Commerce Commission.

"In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 13th day of February, A. D. 1903.

"EDWARD A. MOSELEY,
"*Secretary Interstate Commerce Commission.*"

386 Mr. KERR. This statement gives the computation per ton per mile.

Mr. SHEARN. I do not offer the computation.

Mr. KERR. Did Mr. Moseley make the computation?

Mr. SHEARN. He did not.

Mr. CAMPBELL. Did he make the extracts from the tariffs?

Mr. SHEARN. I do not know whether he did or not. He has attached his certificate and stated that they are correct copies of the existing tariff rates at that time, and I have no doubt that that statement is true and that his certificate is true, and it seems to me it comes with ill grace from counsel to say that the statement of——

Mr. CAMPBELL. As to matters of politeness and grace, we do not propose to take instructions from counsel. I have with great deference to submit that you must take notice of the possibility of Mr. Moseley in his own person not being able to make such an inspection of these papers as to preclude all question as to their verity. As to Mr. Moseley's integrity in the ordinary and usual course of business in passing this certificate to these gentlemen, I have no doubt of it, but they are utterly inaccurate. They do not contain the necessary data in regard to a great many items. They are wholly unreliable, and it is a question in
387 my mind whether it would be profitable to us at this moment to attack them or attempt any cross-examination of the person supposed to have prepared them or whether we shall be obliged to let them go for what they are worth and attack them later on. I can not speak for other gentlemen representing other companies, but they are documents vulnerable to attack from top to bottom, from page to page, and from item to item.

The CHAIRMAN. The most that can be claimed for these papers is that they are compilations made from the tariffs.

Mr. SHEARN. They are copies, if the Commission please, from each of the tariff sheets mentioned, and certified to be true copies.

Mr. BROWNELL. I will be glad to submit to counsel some tariff sheets, and if you can find me in this table anything like in these tariff sheets, I would be glad to see it.

Mr. SHEARN. I have no doubt you can show different tables, but the tables I am going on are those filed according to law with the Commission. I am not going to try the case on tables produced at the trial.

388 These are certified copies of the original tariff sheets on file with the Commission, filed pursuant to statute and so certified by the secretary.

The CHAIRMAN. I do not understand the certificate to certify that these are copies of the tariffs. It certifies that these are the rates shown by the tariffs on file. Is not that the language of the certificate?

389 Mr. BROWNELL. Mr. Chairman, evidently there is a misunderstanding on the part of counsel for the complainants and other counsel as to what this purports to represent. I believe that Mr. Shearn understands that it is a copy of the tariff sheets on file.

Com'r PROUTY. What particular rate on this Table No. 1 do you think is wrong? Name some one rate that you think is wrong.

Mr. BROWNELL. I do not know that any of it is right, because it is not a copy of the tariffs filed by this company or any other company in the office of the Commission. Counsel for complainants stated he understood it to be a copy of the tariffs on file with the Commission. Now, there are four or five columns here on each of these tables which purport to show things which no human being could ever find on our tariff sheet. For instance, the number of miles between points named. I know of no tariff on any road which shows miles. Then, there is a statement of the rate per mile per gross ton to these hundreds of points, which would involve a calculation after having correct data. Neither the data or the calculation appear on tariff sheets. The tariff sheets on file contain various modifications and qualifications which are not in any manner

390 referred to in the tables produced here. This is not, as counsel stated, from copies of tariff sheets, but it is the result of some one's work as presenting his conclusions, tabulations, estimates, and arguments with more or less omission or commission upon the sheets that have been filed. It seems to us that if this is to be of any weight in the minds of the Commission it should be properly proven. We have no objection to the tariff sheets themselves.

Mr. CAMPBELL. In answer to your honor's request to point out one item that is inaccurate, I would point out the very first item.

Com'r PROUTY. Take the first item, which is the rate from Hazleton, Pa., to Jersey City, N. J., via the Lehigh Valley Railroad, stated here to be $1.65 per gross ton.

Mr. CAMPBELL. I am advised that that is positively incorrect.

Mr. GOWEN. It is incorrect. We found the first item wrong and did not go any farther.

Com'r PROUTY. I suppose Mr. Shearn sent to the auditor of the Commission and asked for the rates on anthracite coal and the auditor sent these back. Of course the auditor may have made a mistake.

391 Mr. SHEARN. He has not made a mistake. This is the rate that is shown on the tariff sheet of the Lehigh Valley Railroad for the transportation of anthracite coal from Hazleton, Pa., to Jersey City, N. J., via that road in effect at that time named, and when a requisition is made to your Commission for a given rate, as shown by the last existing tariff sheet filed by any carrier, it is simply a matter of your auditor taking out that tariff sheet and finding what the rate is stated to be and it is so certified. That is what was done. Whether they have been following up and putting into practical effect that rate it is not for me to say. That was the rate in effect at that time and so certified by your secretary.

Mr. CAMPBELL. The tariffs speak for themselves, and I suppose the Commission takes judicial notice of the tariffs on file with them. We have had no adequate opportunity of comparing these rates with the tariff sheets to see what items are correct and what are not, but from the examination made we may fairly object to the whole paper. We do not object to the tariff sheets themselves, but we do not want to have matters complicated by the figures that are shown here.

Mr. SHEARN. There are no complications whatsoever. We ask to do in this case what has been done in every case, what was done in
392 the case of Coxe Brothers & Co.—to offer in evidence the original schedules and then show by certificate from the proper officer that those are the rates shown upon the last published tariff sheet of these respective railroad companies.

Mr. KERR. Do you put this in on the theory that it is prepared in the office of the Interstate Commerce Commission?

Mr. SHEARN. I am not putting it in on any theory. I am putting it in as giving the last existing tariff rates as shown by the tariff sheets filed with the Commission according to law.

Mr. KERR. You should bring the witnesses here to prove it.

Mr. SHEARN. I do not have to; it is prima facie correct.

Mr. KERR. It ought not to go into the record.

Mr. CAMPBELL. If the little mistake, such as the single item to which we have come, was all that there is in this paper, it would be a thing which the Commission could readily correct, but the document is found to be wrong in principle, in form, and in general and in detail. The man who has worked this thing up was not competent to do it, and I do not believe it has been done by any gentleman in the employ of the Interstate Commerce Commission. Now I will proceed to point out, with
393 your indulgence, a few other items, which will illustrate our objections to the paper. You will all understand that we have only had but a casual opportunity to cast our eyes over it and are not prepared at this time to say what other inaccuracies there may be. On the second page you will find given the rate from Pottsville to Hoboken, N. J., by the P. & R. Ry., a hundred and eighty-seven miles. The rate is stated as $1.75 per gross ton. I am instructed to assure you that there is no such tariff rate in existence, and has not been in years. It has evidently been abstracted from something against which the statute of limitations has run years ago. Next, on page two of this paper, is shown Pottsville, Pa., to Port Liberty, N. J., via the P. & R. Ry. and the Central Railroad from Bound Brook, one hundred and eighty-four miles; rate, $1.55 per gross ton. Pottsville is not a point of shipment

at all. It is a gathering point up to which various and humurous laterals come from various mines. The rate and distance that are given here includes none of these things. Then, Pottsville to Baltimore, Md., on the second page, and Pine Grove to Baltimore, Md., both by the P. & R. system and the Chesapeake & Delaware Canal, which includes a large distance of water transportation that is not included in the mileage at all. Then, Pine Grove, Pa., to Washington by the rail route; the distance is wrong. These are inaccuracies that occur to you simply as you
394 pass through this paper. Why should we be encumbered with this document, which has not been adequately prepared? The question is whether we shall undertake to cross-examine this witness and demonstrate by him the inadequacy of its preparation, or whether we shall let this go in subject to the objections that we have made, and in connection with your honor's very proper suggestion, leave it for subsequent testimony to demonstrate, out of the mouths of the witnesses, the various inaccuracies.

Mr. MOOT. Of course, there is not the slightest objection to counsel making this statement, or having it made, and having it used as a part of the brief or argument of counsel; it might be very helpful in that way. But when statements are inaccurate and uncertain as they are—the rates are in evidence, and the rates themselves are the best evidence—the rate sheets filed with you—it seems to me to get up false issues with statements of this kind, which is quite common, I know—it is bad practice. We have to take days or weeks to work out their correctness, with the aid of accountants and experts, and it seems to me it does not help anybody but those who get paid for making them.

Com'r PROUTY. The difficulty is that we have only one rate sheet filed with the Commission, and it can not be brought here and put into this case. What can Mr. Shearn do, therefore, any more than to obtain an abstract, as he has obtained, and have it certified by the secretary of the Commission?

395 Mr. MOOT. He has offered the rate sheets in evidence, and he has done the very thing that he should do, I think, in doing that. He has furnished you with proper testimony—unobjectionable testimony—and because it is unobjectionable it is proper. But this table is unmeaning surplusage that puts upon us a volume of work that we ought not have to meet.

Mr. PROUTY. For the purpose of relieving you from that, he puts in, not the entire rate sheet, but he puts in certain specific rates to which he wishes to refer.

Mr. MOOT. If those were not questioned it would be proper to receive them, but where they are questioned—they have been questioned by counsel as to a good many items—it seems to me they should hardly be received in evidence until we find out what the explanation is. I know we could not get such documents accepted in a court of equity where they stand questioned.

Mr. CLEMENTS. To save handling the rate sheets, won't these be helpful to both parties?

Mr. MOOT. They would if they were correct. If correct they would undoubtedly be very helpful to both parties, but if incorrect they are very inconvenient and very embarrassing.

Com'r CLEMENTS. This statement directs your attention to these matters without having to wade through a whole volume of tariffs. If
396 questioned, the tariffs will determine whether they are correct. This is a mere memorandum.

Mr. MOOT. There are two ways of pointing out the incorrectness. Mr. Shearn has made these calculations, and it turns out, for instance, that he don't know anything about it, and these tables are challenged. The other way is, we get an accountant and put him to work at it, but you have to go back to the original rate sheets. It would seem to me, as long as it is challenged, that the only thing of any value is the statement as to places which they put in evidence—the rates from one place to another. Then let the rates speak for themselves from your own rate sheets. But here is a statement which has a great many columns covering other matters and which turns out to be incorrect.

Com'r CLEMENTS. That has not been demonstrated yet—that it is incorrect.

Mr. MOOT. I am speaking on the theory that if I offer such a paper I must offer some proof of its accuracy. As I read this certificate, or as I have heard this challenged, I can not see how the statement is admissible under any theory.

Com'r FIFER. It can be received subject to verification afterwards from the rate sheet on file with the Commission.

Mr. MOOT. If your honors please, if it is to be verified, let us
397 verify it first. If it is inaccurate, as it is claimed to be, it must be a source of embarrassment and inconvenience to us.

Mr. CLEMENTS. It is not a certificate as to anything but the rates.

Mr. MOOT. Judge Campbell tells us that there is a large distance of water transportation not figured in the mileage at all in one case.

Mr. SHEARN. The water transportation is figured in.

Mr. MOOT. Of course I do not know how that fact may be myself, one way or the other.

Com'r CLEMENTS. It would hardly be possible for such a long paper to be made up without one inaccuracy.

Mr. MOOT. It was not only one, but rather many, as I heard them read. It seems to me that it is asking a good deal of us that we should let it go in evidence without proof of its accuracy.

Com'r CLEMENTS. The rate sheets themselves are in evidence, and this is a mere reference to them.

Mr. MOOT. That is what troubles me—that is, I do not see the value of a mere compilation unless it is an accurate one. Where it is questioned as to being correct it should not go in without some proof of its correctness. I suppose the gentleman who made it up is here, and he can verify. He can verify it if anybody can.

The CHAIRMAN. Is this not the situation, Mr. Moot; the tariffs themselves are in evidence?

398 Mr. MOOT. Yes, sir.

The CHAIRMAN. And complainant's counsel produces a certificate from our secretary.

Mr. MOOT. Yes, sir.

The CHAIRMAN. And the tariffs which are in evidence show that the rates of the 13th of February, 1903, from the places named to the places

named in these tables are the rates there set down. Ordinarily would that not make a prima facie case?

Mr. MOOT. I do not understand the certificate to read precisely as your honor states it. I have not examined it carefully. I understand that Table No. 1 only is based on the rates filed as in effect February 13th, 1903.

The CHAIRMAN. It certifies that "the rates given in Table No. 1 hereto attached on anthracite and bituminous coal and other commodities are the present existing rates as shown by tariffs on file with the Interstate Commerce Commission."

Mr. MOOT. That would raise a presumption that Table No. 1 was a correct compilation of those rates; that is all.

The CHAIRMAN. It seems to me, Mr. Moot, that that makes a prima facie case.

Mr. MOOT. As to Table No. 1.

The CHAIRMAN. As to those rates?

Mr. MOOT. As to Table No. 1 only.

399 The CHAIRMAN. We have never meant to find any such fact in any case without reference to the original tariffs, and their careful examination.

Mr. MOOT. I think this table is questioned as to its accuracy by gentlemen who I know are not in the habit of speaking wildly, and I think we should stand on our objection until we have something more about it—either have the testimony of the man who made it, or a certificate, or something.

The CHAIRMAN. Now, gentlemen, this appears to be the situation: This paper was prepared consisting of eight sheets. On inspection it appears that each one has a number. And so, taking it together, it purports to be Tables No. 1 to 8, inclusive; but Mr. Shearn says that the paper in that form was sent to our secretary and by him certified. He evidently assumed that Table No. 1 meant the whole paper, and intended to certify to the correctness of all the rates in all eight tables as one document, but in form, and having reference to the paper as it appears, he has actually certified to page 1 only. If you make the objection that there is no certificate as to the remaining seven pages the objection will be well taken, and the paper will have to go back for proper verification as to the remainder.

Mr. SHEARN. As to that we have the certificate of the secretary
400 attached to the originals from which this was put in type, and it certifies to each and every part thereof. I simply called your attention to the fact that this table consists of eight sheets, but there is nothing on the certificate or paper itself that does not show, or shows to the contrary, of this certification applying to each and every sheet. This series of sheets is fastened together and entitled "Table No. 1," and properly certified to.

The CHAIRMAN. Have you another certificate besides this one?

Mr. SHEARN. Yes, sir; I have at my office, attached to the originals from which this comparison was made, and that certificate applies to each and every one of these sheets. In other words, when this was gotten up it took up a great deal of room and covered a great many pages. There were all these different items gathered together on large sheets, perhaps four feet square, and, as they were cumbersome and could not

conveniently be used in court, for the convenience of the court and counsel, I had those sent down to the Commission and compared with these printed copies, and the printed copies certified to. There is nothing that will show your honors that this certificate does not cover each and every sheet mentioned in that exhibit. This is Table No. 1, marked on the outside of the first page—or one paper; all in one document. It seems to me that this objection is trivial. If there is doubt about this it can all be resolved by the most casual inspection of the
401 original tariff sheets. This is gotten up for the convenience of court and counsel. What they are bound by is the originals on file. Everybody knows that it is an impossibility for the Commission to go down into its files and pick out painfully and slowly every one of these rates. There are more sensible ways of doing it, and the way that is generally adopted is to have one of your auditors make the comparison and have a certificate made. That has been done and that makes it a prima facie case of the correctness of these rates. If there is any inaccuracy in it it can be at once pointed out, very readily pointed out, but we are ready to stand on it. It has been very carefully compared; it has been compared over and over again, and it is properly certified to. This is simply an attempt to prevent you from knowing what the rates are, and to prevent everybody else from knowing what the rates are, because it is a physical impossibility for you to go into your files and examine all these rates. If there is any fault to be found with this certificate it can be corrected without any trouble. I do no see why this proceeding should be halted by any objection made so far.

Mr. CAMPBELL. I think at this stage that a proper and regular and orderly objection should be made formally on the face of this
402 record. We object to this paper because only a part of its contents is proved as offered or has any status as evidence. That is a sufficient objection. A paper that is only partially proved is not competent evidence. All of the purposes of counsel can be served without offering it in evidence. If it goes into the evidence in this inadequate shape it casts upon us the burden of proving the incorrectness of every item that is incorrect. These rates from point to point are absolutely incorrect when they are placed in connection with the various items that are set opposite them on the same line. For instance, a rate from one point to another might be correctly stated and still be incorrect when taken in connection with the other data that is put on this paper. We will have to explain that. For instance, as I have stated, rates are given here by way of the Philadelphia & Reading and Central of N. J. from Pottsville and elsewhere to Hoboken. There was never in the world a tariff put in on those roads by that route. No such rate exists or ever did exist. So you see it is put upon us to prove these facts in an attack on this document. We ask you not to put that burden upon us unless you find it to be absolutely necessary.

403 The CHAIRMAN. Now, Judge Campbell, the rate sheets are in evidence. That is the original source of information. Suppose that Mr. Shearn in the argument of this case produces a brief in which he claims that the rates are so and so; he makes a compilation of what he says the evidence shows, and then you say no, that is not that way altogether. So far as it is technically accurate it does not justify the

inference drawn from it, you say. Now, why can not this be treated as a memorandum, as in the nature of a statement of what the complainant claims is shown?

Mr. CAMPBELL. I am quite content, your honor, to take the attitude which you describe, but that it shall have the value of evidence here without cross-examination or enquiry, I object to it. If it casts upon us the burden as I stated. I think it is unreasonable. But if it is a private memorandum to be used in argument before your honors, to be supported by such support as it may have by reference to the tariffs themselves, I shall not say anything about it. The counsel can make as many mistakes as he pleases in his speeches.

404 The CHAIRMAN. We do not accept this as evidence.

Mr. SHEARN. I am not offering anything except evidence and do not propose to. I propose that you shall base whatever findings you make, of course, upon evidence. We have in evidence the original tariff sheets, and I am offering for your consideration, for whatever it may be worth, these tables. I won't say what these tables are worth or what their significance is. That is a matter of argument; but this paper submitted to you is evidence, and competent evidence of the rates shown by the tariff sheets on file with your Commission by the tariffs of these roads for that time, and I insist with all respect that this exhibit containing the names of the commodities, the names of the roads, the points of destination, and the rate, that has been proved.

Com'r FIFER. You can file a certificate from the secretary covering each portion of the paper.

Mr. SHEARN. I can do so, of course, if any such objection is made. I say, however, that this paper as it appears before you—if they are going to be technical about it—has been properly proved, because it is entitled, table No. 1, and it has the certificate of your secretary

405 attached.

Com'r PROUTY. Turn over to table No. 2, please; what does that mean?

Mr. SHEARN. That means page No. 2, under this certificate, of table No. 1.

The CHAIRMAN. In form the certificate attached covers only this first sheet.

Mr. SHEARN. If the Chairman, please, may this not be received upon my assurances to you that if that point is pressed I will procure a certificate covering each and every sheet of this statement?

Mr. KERR. We do not stand here insisting upon a purely technical objection. This situation has been clearly stated by Judge Campbell. The evidence of the rates is before the Commission in the tariff sheets that are on file in your office. Different inferences can be drawn from them and tables made up by counsel representing the respondents here as they see fit. We object to a paper made up by counsel such as this, having the force and effect of evidence and going in as evidence in this proceeding.

The CHAIRMAN. The rate sheets are on file.

406 Mr. KERR. Yes, sir.

The CHAIRMAN. Is not the certificate as to the rates of the secretary, who is custodian of those records, sufficient to make a prima facie case that they are so and so?

Mr. KERR. If we had a certificate of that kind, it might be one thing.

The CHAIRMAN. That is all he certified to, and that is all the paper is offered to show.

Mr. KERR. Permit me to make one further suggestion. Suppose, after this hearing, there should be a review of this proceeding here upon the record as introduced now. Assume that the paper is admitted as evidence now, and there should be a review of the proceedings afterwards of what goes into the record.

The CHAIRMAN. Suppose Mr. Shearn produces a witness, and instead of offering this table he asks a competent witness who has examined these tariffs about these rates. Suppose he has our auditor here, and he asks what these tariffs show the rate to be from Hazleton to Jersey City, and he says so many cents a ton, and follows on down through the whole list. Would that be competent?

Mr. KERR. Yes, sir.

407 The CHAIRMAN. He might be cross-examined.

Mr. CAMPBELL. He would be, certainly, if he testified to these figures given here.

Mr. KERR. When he states that that is what appeared upon the tariffs or rate sheets, that would be competent, undoubtedly.

The CHAIRMAN. That is what the certificate covers.

Mr. KERR. But as to that which follows in connection with it as a conclusion drawn from it——

The CHAIRMAN. That is not offered with it—nothing more than that the rates were so much between certain places named in the commodities stated. That is all that is proved.

Mr. SHEARN. This is not a jury case. This court is not going to be fooled by figures. This court is not going to have an impression made upon its mind which can not be eradicated. I distinctly stated when I made the offer that I only offered so much as showed the distance

408 and the rate. They say that they do not stand upon any technical objection. I can not imagine anything more technical. This is the method in use, and I have never known it to be objected to before. If these rates were not correct, you must feel sure I would not attempt to offer them. We would never get through with this proceeding if it were necessary for me to bring your auditors up here and have them bring those sheets along, and go through each and every one of them. It would take six months at the very least. So, in order to expedite the matter, we have had these extracts made from them, and had them properly certified. I can not imagine any valid legal objection. Back of it all are the rate sheets themselves, which are in evidence.

Mr. KERR. There are four columns here of rates. Which one of those is introduced here?

The CHAIRMAN. As we understand it, he offers this paper with this certificate of the secretary to show prima facie that it appears from the tariffs that the rates from the places to the places named, and by the roads named, and on the commodities named in this paper, were on that particular date, as appears in the second column of the paper, in

409 dollars and cents per gross ton, nothing more. We will receive that subsequent to the requirement that the secretary's certificate be corrected so as to plainly include the whole eight sheets of this paper if the objection is insisted upon.

Mr. CAMPBELL. Our objection is of record.

Mr. BROWNELL. Does your honor propose to receive in evidence these sheets with printed matter on them?

The CHAIRMAN. Only so far as shows the rate per gross ton.

Mr. BROWNELL. If I might offer a suggestion—this is not an immaterial matter at all—the rate that is given here for carriage between the points mentioned is only one-tenth, perhaps, of the matters purporting to be stated as facts. Counsel says that he has after great labor picked out points giving the rates on anthracite coal and the rates on bituminous coal and on other commodities; he has picked them out with regard to supporting his contention, and without regard to what may make them higher or lower per ton per mile than the average upon clay or various other commodities, and so draws his conclusions that the average rate between the points named which he has picked out are more on anthracite coal than on bituminous.

410 The CHAIRMAN. We understand that counsel offers no more, and we admit no more, for instance, than prima facie that the rate on coal from Hazleton to Jersey City by the Lehigh Valley is $1.65 per gross ton, as shown by the tariff of that road on file at that time, and that the rate from Mauch Chunk to Elizabethport, N. J., by the Central Railroad of New Jersey is $1.55 per gross ton, or was at that time. That, for illustration, is all that is offered or admitted.

Mr. BROWNELL. The shortest way to get that would be to make a new table and add to that such points as counsel for the companies wish to put in, and then you would have a handy sheet which would contain no improprieties.

Mr. SHEARN. Of course I can only prove one thing at a time. I am going to follow this up later in the case by proving all these computations, which will make every part of every sheet competent evidence. I will refrain from doing that until counsel have had an opportunity to verify these figures, and I think after they have taken that opportunity that they will agree with me that that is correct. If not, I will put the witness in on the stand and prove them to be correct as to all computations.

411 I understand that the offer is accepted as to the rates on the commodities named on each of these sheets, from the points named to the points named, on the railroads and by the routing named, per gross ton per mile.

Mr. KERR. That is not what appears in that second column.

Mr. SHEARN. The rate per mile per gross ton?

Mr. KERR. No, sir.

Mr. SHEARN. I mean the rate per gross ton.

The CHAIRMAN. It seems to us that the certificate of our secretary as to the certain articles between certain places that the rates are so much as appears by the tariff on file at the time make a prima facie case. Such certificate is competent to make that a prima facie case, just as if the secretary or the auditor was here and called as a witness, and asked to show what the tariff in effect showed the rates to be from Hazleton or Mauch Chunk, and so on. Now of course this certificate technically does not cover anything more than the first sheet. The objection that the certificate does not cover the others is technically well taken. We will receive it subject to proper certification.

412 Mr. SHEARN. How will exhibit be marked—A or No. 1?

The CHAIRMAN. No. 1.

(The same is hereto attached and marked "Exhibit No. 1.")

Mr. SHEARN. I beg to call attention of the Commission with reference to this exhibit a few of the salient features of these schedules. The rate from Hazleton to Jersey City, by the Lehigh Valley Railroad, on anthracite coal, as to which comment has been made, was $1.65 a ton. When that is reckoned with reference to the rate per mile per gross ton, it will be ascertained that that is a rate of .01138. Another rate here is from Wilkes-Barre, Pa., to Philadelphia, by the Lehigh Valley to Coal Port, and the Delaware & Raritan Canal for the same distance less one mile, namely 144 miles, is $1.80. The rate from Scranton, Pa., to Syracuse, N. Y., on the D. L. & W., a distance of 142 miles, is $2.00 per gross ton.

Mr. KERR. Does this go in as evidence, or what is this?

The CHAIRMAN. No.

Mr. SHEARN. The rate from Pottsville, Pa.——

413 Mr. KERR. We have nothing more up to this point than that the rates are prima facie as shown in this table—the rates on the articles named between the places named from the tariffs on file with the Commission.

Mr. SHEARN. It seems proper for me to make comments on them as we go along.

Mr. KERR. The comments on them go apparently into the record here if reported in the stenographer's minutes.

Mr. SHEARN. The stenographer correctly reports them as coming from the counsel.

Mr. KERR. Of course I have no doubt of that.

Mr. SHEARN. The officials of the Commission seem to be under grave suspicion.

Mr. CAMPBELL. I would like to have the gentleman state, if I may interrupt him a moment, for my enlightenment and for illustration, why he objects to that rate of $1.80 being different from something else, from Wilkes-Barre to Philadelphia. Why do you object to it?

Mr. SHEARN. The ground of objection I will not make known at this stage of the case. I do not propose to be cross-examined by counsel.

414 Mr. CAMPBELL. By that route the coal has to be loaded into the boat and lifted out again.

Mr. SHEARN. From Mauch Chunk to Jersey City, by the Central Railroad of New Jersey, 119 miles, the rate is $1.75. On bituminous coal from Barclay to North Fairhaven, N. Y., over the Lehigh Valley, a distance of 133 miles, the rate per net ton is $1.15. From the same place to Cazonovia, N. Y., via Lehigh Valley, 128 miles, the rate per net ton is $1.00. From Adena, Ohio, to Cleveland, Ohio, 127 miles, the rate is shown to be 85 cents. On pig iron—that appears below—from Bethlehem, Pa., to Jersey City, by the Lehigh Valley, 88 miles, the rate per gross ton is 65 cents. From East Pennsylvania Junction to Jersey City, over the same road, and Catasauqua to Jersey City, over the same road, the rate is also 65 cents. The average distance on bituminous coal shown on this schedule is 129 miles——

Mr. BROWNELL. Does that go in as evidence?

The CHAIRMAN. No, sir.

Mr. SHEARN. The rate per mile per net ton on bituminous coal amounted to .772 cents, and on anthracite, where there is an average dis-
415 tance of 123 miles, the rate per mile per net ton amounted to 1.3 cents, or 1.343 cents, to be precise, per mile per net ton. The average distance on pig iron is 93 miles, and the rate per mile per net ton .627 cents. That is to say, the average rate on anthracite coal is 174 per cent of the average rate on bituminous coal, and the average rate on anthracite is 214 per cent of the average rate on pig iron of the rates shown by this table.

The second sheet shows distances from 150 to 199 miles. The rates from Wilkes-Barre, Pa., to Jersey City, N. J., by the Lehigh Valley, distance of 175 miles, is $1.70 per gross ton. From Wilkes-Barre to Perth Amboy, N. J., 158 miles, on the same railroad, the rate is $1.55 per gross ton. The rate from Pottsville, Pa., to Hoboken, N. J., over the Philadelphia & Reading, and by the Central Railroad of New Jersey from Bound Brook, 187 miles, is $1.75. From Pottsville to Port Liberty, N. J., a distance of 184 miles by the same route, is $1.55. From Pottsville to Baltimore, Md., by the Philadelphia and Reading and the Chesapeake & Delaware Canal from Port Richmond, 187 miles, is $1.85.
From Scranton to Jersey City, over the Central Railroad of New
416 Jersey, is 119 miles, the rate is $1.75. Now, go down to bituminous coal found below. Take the rate from Corning, N. Y., to Dunkirk, N. Y., over the Erie, the distance is 169 miles, with a rate of 90 cents per gross ton for 169 miles. From Elmira, N. Y., to Buffalo, via Erie, the distance is 152 miles, the rate 90 cents. Now take pig iron from Harrisburg to New York over the Reading. The distance is 180 miles and the rate $1.50 per gross ton. The average distance on that schedule is 172 miles for bituminous with a rate per mile per net ton of .492 cents, and the average distance on anthracite, 183 miles—nearly the same average distance, with a rate per mile per net ton of .878 cents—nearly twice the rate on bituminous. On the other commodities named, sand and stone, pig iron, iron-ore, and limestone, the average distance was 184 miles, only one mile different from the average on anthracite, and the rate per mile per net ton was .633—that is to say, the average rate on anthracite was 178 per cent of the average rate on bituminous, and 138 per cent of the average on other commodities given.

417 On table 3 we have comparison comprising distances from 200 to 249 miles. Here is the Carbondale rate: Anthracite to Jersey City, by the Erie Railroad, the distance is 233 miles and the rate $1.75. From Shamokin to Hoboken, by the Reading and the Central of New Jersey, the distance is 231 miles and the rate $1.75. From Pottsville, Pa., to Washington, D. C., by the Reading and the Chesapeake & Delaware Canal from Port Richmond, a distance of 227 miles, the rate is $1.85. Take Scranton, Pa., to Weehawken, N. J., on the Ontario & Western, 214 miles, the rate is $1.60 per gross ton. On coke the rate from Connellsville, Pa., to Cleveland, O., by the B. & O., 227 miles, and the rate is $1.60 per net ton. On pig iron from Allentown to Baltimore over the Reading, 209 miles, the rate per gross ton is $1.40. The average distance on bituminous on that schedule is 230 miles with an average rate per mile per net ton of .451 cents. The average distance on anthra-

cite coal, 224 miles, very nearly the same distance of haul, with an average rate per mile per net ton of .743 cents. The average distance on coke and pig iron was 217 miles, with an average rate per mile per net ton
418 of .629 cents. The average rate on anthracite was 164 per cent of the average rate on bituminous.

Mr. MOOT. I want to suggest to the Commission right here that this is rather unusual. It will take an interminable amount of time. If counsels have the witness here who made the computations it might do some good, and it would do good for us to know why he picked these out, and whether they are a fair average, and all that sort of thing; but I do not think we are getting any light this way.

Mr. SHEARN. These are the schedules and rates?

Mr. MOOT. No; those are the computations of the gentleman you said would verify them, but who has not done it yet. I submit, if your honor please, if there is any relevence here at all, that we should have the witness to speak for these computations so we can get at him on cross-examination.

The CHAIRMAN. This is not testimony, Mr. Moot?

Mr. SHEARN. Without going over each of these tables you will see the distance so far taken, including the distance of the haul from the anthracite mines to all the principal points of distribution, include all the distances from the mines to tide water here, to Port Richmond, Balti-
419 more, and Washington, those being the points to which the great bulk of this coal goes.

The average distance on bituminous coal on the fourth sheet, comprising distances from 250 to 299 miles, both inclusive, was 281 miles, and the average rate per mile per net ton was .425. The average distance on anthracite was 271 miles and the average rate per mile per net ton .743. On pig iron, cement, and clay the average distance was 263 miles and the average rate per mile per net ton .561 cents. The average rate on anthracite was 174 per cent of the average rate on bituminous; and the average rate on anthracite was 132 per cent of the average rate on cement, pig iron, and clay.

Table No. 5 contains a great many other commodities and a great many rates, not only numerous bituminous rates, but on coke, brick and clay, pig iron, paving brick, and the average distance on bituminous coal was 337 miles with an average rate per mile per net ton of .447. The average distance on anthracite was 347 miles with an average rate per mile per net ton of .723 cents, and an average distance on other
420 commodities of 327 miles, and an average rate per mile per net ton of .466. The average rate on anthracite was 161 per cent of the average rate on bituminous and 155 per cent of the average rate on other commodities given.

Similarly on distances from 400 to 499 miles, the average distance on bituminous was 442 miles with an average rate per net ton per mile of .413, and on anthracite the average haul was practically the same—433 miles—with an average rate per net ton per mile of .651. The average distance on other commodities was 442 miles. That is identical with the average distance on bituminous, and nearly the same as on anthracite. The average rate per net ton per mile on those commodities was .459 cents. The average rate on anthracite was 157 per cent, on that long

haul of the average rate on bituminous, and the average rate on anthracite was 141 per cent of the average rate on other commodities given.

As the distances grow longer, you will observe that the rates
421 approach more nearly the same, until we get to a point on a long haul where anthracite is carried at practically the same rate as bituminous. Take the haul on table No. 7, comprising distances from 500 to 649 miles, inclusive. The average rate for bituminous is .379 cent, and on anthracite .464 and for coke .446, with an average rate on anthracite of 122 per cent of the average rate on bituminous, and 104 per cent of the average rate on coke.

Lastly are given on table 8, distances from 650 miles upwards. The average distance on bituminous being shown as 704 miles, with an average rate per net ton per mile of .385. The average distance on anthracite was 1,015 miles, with an average rate of .363 cents. In other words, on this table the average rate on anthracite was only 94 per cent of the rate on bituminous. I ask to have marked for identification a table showing the anthracite coal tariff, prepared sizes, on the Philadelphia & Reading R. R., the Central Railroad of N. J., and the Lehigh Valley Railroad, from the points therein named to the points therein named.

(Hereto attached and marked "Exhibit No. 2" for identification.)

422 Mr. SHEARN. I ask to have marked for identification a similar table covering the rates on anthracite and bituminous coal and other commodities on the Erie and the Pennsylvania Railroad Company.

(The paper was marked "Exhibit No. 3," for identification.)

Mr. SHEARN. I ask to have marked for identification a similar table for the New York, Ontario & Western, and the Delaware & Hudson, and the Delaware, Lackawanna & Western Railroad Company.

(The paper was marked "Exhibit No. 4," for identification.)

Mr. SHEARN. I offer in evidence a schedule entitled "Schedule A," comprising a period of five years ending June 30th, 1902, showing the amount of surplus, the gross earnings from operation, the gross earnings from freight, the operating expenses, the percentage of operating expenses to gross earnings, the total net income, the net income from operation, the gross earnings from operation per mile, the freight earnings per mile of road, the operating expenses per mile of road, the net income from operation per mile of road of the Philadelphia & Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna & Western Railroad, the Central Railroad of New Jersey,
423 the New York, Susquehanna & Western Railroad Company, the Erie Railroad Company, the New York, Ontario & Western Railroad Company, the Delaware & Hudson Company, the Pennsylvania Railroad Company, and the Baltimore & Ohio Railroad Company. Certified to by the secretary of the Commission.

Mr. BROWNELL. What is the certificate?

Mr. SHEARN (reading). "I, Edward A. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that the foregoing table, entitled "Schedule A," is a true and correct compilation from all the annual reports filed with said Commissioner by the carriers named and for the years mentioned in said schedule.

"In witness whereof, I have hereunto set my hand and affixed the seal of the said Commissioner this 15th day of April, 1903."

Mr. KERR. I object to that on the ground that the reports are already filed. I do not think we should take a compilation of anyone.

Mr. CARR. I join in the objection on behalf of the Delaware & Hudson. All the information can be derived from the reports, all the inferences can be drawn from them, and all the compilations can be presented from them at the proper stage of the case.

The CHAIRMAN. These are not your annual reports; they are
424 your reports to the Interstate Commerce Commission. Your annual printed reports are something very different from these.

Mr. KERR. No, sir; the annual reports are all really published——

The CHAIRMAN. In the case of a great many railroad companies the reports as made to stockholders and the reports made to the Interstate Commerce Commission are two different things. They don't cover the same period; the year does not end at the same time.

Mr. KERR. Yes, sir; I beg your pardon, it does. This is a compilation which it is rather unfair to let go in.

Commissioner CLEMENS. How does it occur to you, Mr. Kerr, that you could be mistaken in this compilation, which is taken right from your reports to this Commission?

Mr. KERR. It is simply a matter of argument, that is all. It is perfectly proper for Mr. Shearn, in the finishing of the case, to bring the attention of the Commission to any compilation he choses and any method of figuring he choses, but not to pick out certain figures, but to take the whole report together.

The CHAIRMAN. We will regard the annual reports made by the defendant roads to the Commission in this proceeding as in evidence—the entire reports.

425 Mr. SHEARN. I may say here——

Mr. KERR. You mean to take that for what it is worth?

The CHAIRMAN. This will be taken, so to speak, as a matter of convenience. The figures that are used will be verified. Can you furnish counsel with a copy of this?

Mr. SHEARN. Why, I can. I will take some time to do it, but they have all these figures.

Mr. CAMPBELL. We have the detailed figures.

The CHAIRMAN. They can not tell whether you have figured them up correctly.

Mr. SHEARN. I will also say that I am going to offer the annual reports issued by the railroad companies, not only the annual reports filed with your body, but, meeting the suggestion made by Mr. Kerr, we shall offer the annual reports issued by the railroad companies, so that there won't be any doubt about it, and I would like to ask the Commission to make an order that each defendant shall produce here a copy of its annual report covering the years ending June 30th, 1901, and June 30th, 1902. I wish to put those in evidence.

Mr. KERR. What annual reports do you mean?

Mr. SHEARN. The annual reports issued to your stockholders.

426 These are taken from the annual reports made to the Interstate Commerce Commission.

The CHAIRMAN. But let us deal with this matter before us. We will regard the annual reports made to the Commission of all these roads as in evidence. You offer a sheet which the secretary certifies is a compilation from those reports?

Mr. SHEARN. Yes, sir.

Mr. KERR. But, as I say, that is only on certain items.

Mr. SHEARN. Well, we don't want to print the entire report.

Mr. KERR. I say there is not any justice in taking and putting in evidence a compilation of that sort, which only takes in certain items of the business of the company, with no reference whatever to the capitalization or to any other interest that enters into the management of a railroad.

Mr. SHEARN. I am going to prove the capitalization—you needn't worry about that; also the funded indebtedness.

The CHAIRMAN. You have a right to refer us to anything that appears on those reports.

Mr. KERR. Yes; but we do not like to have these fractions
427 put in. They will be misleading on the record.

Mr. SHEARN. Why, they are their own reports.

Mr. KERR. That is not our report. It is a deduction you have made.

Mr. SHEARN. Every item on that schedule is reported by each of these railroad companies to your Commission.

The CHAIRMAN. The one point just now is, Mr. Shearn, how will these gentlemen have any opportunity to ascertain whether your figures are correct or not?

Mr. SHEARN. Well, I will furnish them with a copy, if the Commission directs it.

Mr. KERR. Well, we certainly must have an opportunity to verify it.

Mr. SHEARN. Certainly. I will file it with the secretary.

The CHAIRMAN. This seems to be a very formal paper. All these reports are on file for the roads, and each item is shown separately from other items. It is merely a question of bringing it together. It can not be very important.

Mr. KERR. It is simply a question of argument. In investi-
428 gating a railroad company you want to take in the entire position. We stand on our reports as filed.

The CHAIRMAN. I do not remember the form of the certificate. I am not accepting this as a compilation. So far it is a transcript so that the figures may be brought to our attention now, but the evidence is the report itself on file in each case. Now, he says these reports which are in evidence show so and so as to these matters. The memorandum, so to speak, calls it to our attention now. If you want to bring anything else to our attention that is in these reports I have no objection to your doing it.

Mr. BROWNELL. We would like to have copies of them made.

Mr. CAMPBELL. We would like to have some understanding with counsel about copies. If copies are to be embodied in the record of proceedings to-day so that we can have them from the stenographers, that is one thing; if the gentleman is to supply us with copies, that is another thing; if we are to depend upon ourselves, I would like to have an opportunity to examin*ing* a copy of the paper myself. Some understanding on the subject ought to be entered into.

429 Mr. SHEARN. My suggestion would be that the original exhibit be filed with the clerk of the Commission, and then it would be at the disposal of all counsel.

The CHAIRMAN. What do you want of these figures, anyway?

Mr. SHEARN. Because I am going to marshal before you all the facts that I think are significant bearing on the question of the reasonableness of rates, and that involves, according to the reports and decisions of the Commission, an investigation into the financial condition of the companies and their capitalization and funded debt and a host of other things, and all those facts I am going to probe before this Commission, and give you just as much data as is in my power to form a decision upon. Now, if they think, as you suggested, that there are other facts that are significant, why, let them put them in, but these are the facts on which I rely—some of them.

The CHAIRMAN. The reports themselves are in evidence. They are the best evidence.

Mr. SHEARN. Yes.

The CHAIRMAN. Now, you can point out in argument what those reports show. How can you make the independent proof by compilations——

430 Mr. SHEARN. Why, it can not be assumed that this record is to be burdened with the entire annual report to your Commission of each of these carriers. I simply extract what I want.

Commissioner PROUTY. The trouble with your document is that it is not an extract; it is a compilation.

Mr. SHEARN. I have given you a compilation and your secretary certified that it is correct.

Commissioner PROUTY. Now he can not do that.

Mr. SHEARN. Well, he has done it.

Mr. CARR. It is not competent legal evidence in any sense.

Mr. SHEARN. There is not an item in this document that is not taken from your annual report of Statistics of Railways filing reports with your Commission. They have all been carefully compiled by your auditors and certified to and issued in bound volumes from year to year, and we have extracted from them such figures as we deemed to be significant and important, and the secretary certifies that they are correct. Now, if it is insisted by counsel that we shall produce all these original books and papers and that we shall have to stand up here and read in item by item of these figures, I will do it if they want to sit here and you want to sit here, but it does not seem to me that it is the way to try this case.

431 Mr. KERR. Mr. Shearn, of course we are glad to hear you talk, but we do not think we want to hear you read all those figures. Couldn't you furnish us printed copies of whatever you wish and let us go over it?

Mr. SHEARN. I will do so.

Mr. KERR. In advance?

Mr. SHEARN. You can not do it in advance, but you can go over it after I have furnished them to you.

Mr. KERR. Then we will have a chance to see them?

Mr. SHEARN. In the first place it is a matter of convenience I should say to counsel on the other side as well as the Commission to have it

pointed out to them the various figures and items that we deem to be significant and that we are going to rely on in this case, instead of waiting until the case is all over and then somebody getting up and making a speech and telling you he has figured all these things out and they are thus and so. I should think it would be better, if we are going to arrive at a just determination of this cause, for the Commission and counsel to be apprised in advance of all the figures and all the data that we are relying upon for the decree that we ask you to make. Now, then, here they are. If they are incorrect why there is an abundance of time to point out the incorrections, but they are not incorrect; they
432 have all been compared carefully and certified to; all this information is in their possession. These are their own figures. They are their own computations. They have been published from year to year by your Commission and they are accepted by everyone.

Mr. CAMPBELL. The trouble about that is that these interesting facts which the gentleman is now reciting may or may not be true. If he would tell us these things in advance we could determine whether they are true. I have no reason to doubt you, but I would like to see them.

Mr. SHEARN. I will give you an opportunity to see them.

Mr. CAMPBELL. If they are true we will admit them.

The CHAIRMAN. How are they going to get an opportunity to verify these figures?

Mr. SHEARN. This is introduced as an exhibit in this case and the copies, at their request (printed copies), will be furnished them; this hearing is going to last more than twenty-four hours; they will have abundant opportunity to go over them, but their admission is not dependent upon whether these gentlemen find them to be correct or not. If
433 they are incorrect, when they get to their side of the case let them show it, let them show it; but we will give them every opportunity they require to verify it. Just as I did to-day with reference to these schedules before recess, I gave everyone of them a copy and they have hustled them off to their several accountants and they are going over them; and when they have gone over them I hope they will come to an agreement that these are correct and they will go in as an entirety. The figures I have offered in this last exhibit, as I say, are all their own computations on file with your Commission, and are certified to by your secretary, and it seems to me that that is enough. If it is not, why I will bring up your auditors and bring up the reports and we will sit here until we get it out, but I think that would——

The CHAIRMAN. Read that certificate again, Mr. Shearn.

Mr. CARR. I want to make a formal objection. You can not make evidence in this way. The reports are in, anyway. Whether the secretary certifies to the compilation or not, you can not make original evidence in that way. I object to it on the ground that it is incompetent and improper.

Mr. SHEARN. You asked me to read the certificate——

434 Mr. CARR. I did not ask you to read the certificate; I simply called the attention of the Commission to what he says. There should nothing of that kind go in, which is a compilation made from these reports, unless it is absolutely correct, and unless it is made so before it goes in.

Mr. SHEARN. I will read the certificate: "I, Edward A. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that the foregoing table, entitled Schedule A, is a true and correct compilation from all annual reports filed with said Commission by carried named, and for the years mentioned in said schedule." Now, there is only one alternative, and that is to bring these original reports up here and go over them item by item, and I am ready to rest my case on the accuracy of these figures. This is not play. This is in earnest. We are seeking a decree that means something to the public; means something to these carriers, and I think it is fair to them and fair to the Commission that all the items in these various reports that we are going to rely on and make our argument upon should be called to their attention and
435 should be collected in such form as to be intelligible to the Commission. That is what we have sought to do, and I think this schedule does it and does it admirably.

The CHAIRMAN. Doesn't this accomplish your purpose, Mr. Shearn? You are constructively in the attidude of offering original reports.

Mr SHEARN. I have offered them.

The CHAIRMAN. Now, in connection with those you point out certain facts or figures in those reports and certain conclusions from them which you say you are going to rely upon. You call the attention of the other side to those features of their own reports. Is not all there is of it?

Mr. SHEARN. That is all there is of it. I have offered the original reports. They are before the Commission. Now, for the actual data themselves, if it is ever open to question, the Commission will rely not on this paper but on the originals; but this exhibit enables the Commission to find out readily, and enables the counsel to find out readily what the figures are we do rely on. How would it be if we got to the end of the case and, in making an argument, counsel quoted hundreds and hundreds of columns of figures such as these and computations
436 such as I am going to put in evidence, would it be expected that each and every one of you would have to go to work and figure these out and examine all these original reports? Is it not more orderly and is it not better that we call their attention to these figures at the outset?

Mr. KERR. Let us have copies of it.

Mr. SHEARN. I shall do so, of course.

The CHAIRMAN. That is right. These gentlemen press the objection that that does not make the paper itself competent as independent evidence.

Mr. SHEARN. It proves what it proves, and it is worth what it is worth, and the certificate states what it states, and it can not get any additional value by anything that is omitted from the certificate.

The CHAIRMAN. No; that is quite right. All the facts are in evidence.

Mr. SHEARN. Yes, sir; you might call this a bill of particulars.

The CHAIRMAN. It is in the nature of a memorandum.

Mr. SHEARN. It amplifies our complaint; it amplifies our pleading.

437 The CHAIRMAN. It seems to me if you have the bundle of reports here, the originals here, and offer them in evidence, they are unquestionably competent, and are received. In connection with

that you present to the court and counsel on the other side a statement, a memorandum, which you have prepared and which apprises the other side of the particular facts in those reports to which you intend to call attention, so that they may be prepared to know what you will claim on the facts in evidence; but that does not make the paper itself competent as evidence. That is the way it strikes me. Just file it as a memorandum in connection with the reports which are received in evidence.

Mr. SHEARN. If that disposition is to be made, then the only thing for us to do is to go to Washington and get to work on these volumes with your auditors. It seems to me that this is the orderly and sensible course to pursue, and it will save a great deal of time. How is it possible, may I ask, for anybody to be prejudiced by the admission of this document in evidence?

Mr. CAMPBELL. Only in case it is not true.

438 Mr. SHEARN. It seems to me that the plaintiff would be the most prejudiced if it is not true. I can not see how would suffer more than the plaintiff if it were not true.

Mr. CAMPBELL. But he offers it and wants it marked in evidence before we have a copy of the paper.

Mr. SHEARN. Yes; I am going to offer a number of computations based upon these figures. I should like to facilitate the progress of the hearing; for that reason, I have collected all this data in advance. Now, if they desire to string it out and put us to all this trouble simply to insist on a technical objection, why I will bow to it and we will go on in that way, but I do not think it is reasonable.

Commissioner CLEMENTS. Why is it necessary to do that, if you put this paper in as a memorandum?

Mr. SHEARN. I do not claim for this any more than that it is a memorandum.

Mr. CLEMENTS. Now, if that is a certificate that contains extracts and copies of these documents, you could hardly claim you could use that in court on that sort of a certificate as being a copy of these documents; you have got the evidence all in.

Mr. SHEARN. It seems to me that is a computation undoubtedly——

439 Commissioner CLEMENTS. A compilation might mean a good deal more than an extract.

Mr. SHEARN. But you are perfectly well aware of the fact that those are the compilations made by the railroad companies.

Commissioner CLEMENTS. But somebody else might draw different conclusions from the same figures.

Mr. SHEARN. It does not make any difference to me what it is called.

Commissioner CLEMENTS. It would not defeat your purpose to put it in and let it go as testimony for the uses you have pointed out?

Mr. SHEARN. I am perfectly content to do that, and that will give them an opportunity to examine it; and even if it is then questioned we will dig out all the originals and read them in evidence, but I hope that won't be necessary.

Then I add, that I offer this paper, Schedule A, and ask to have it marked "Exhibit No. 5."

Mr. CARR. I do not withdraw the objection by any means under the threat of going down to Washington and reading all those reports.

440 The CHAIRMAN. Mr. Shearn, you may file that paper with the Commission as a memorandum prepared by you in connection with the original reports which are already received in evidence. It is a memorandum which apprises the court and also the other side of the particular facts in those reports to which you call attention on which you rely. Does not that accomplish fully your purpose?

Mr. SHEARN. Would it not be fair, then, for the court to set a time when counsel are to state whether or not they will insist upon this objection, so that we will know whether we have to put in evidence and read in evidence the separate entries from these original papers?

The CHAIRMAN. There is no need of reading them. They are in evidence.

Mr. SHEARN. I know; but somebody has to verify them. We have had them verified by the secretary of the Commission.

I renew the offer of the paper and ask that it be marked "Exhibit No. 5."

Mr. BROWNELL. For identification?

Mr. SHEARN. No; I offer it in connection with the observations that have been made from the bench, bowing to the suggestions that
441 have been made. Now, in order to keep all these things separate I would like to have it marked.

The CHAIRMAN. We must hold that that is not competent as evidence. It may be filed as an exhibit or memorandum in connection with the annual reports themselves, which are in evidence. It is what you claim those reports show.

Mr. SHEARN. Yes, and what your secretary claims they show.

The CHAIRMAN. And no doubt that is correct.

Mr. ROSS. And it is with the understanding also that we are to have a copy of these exhibits.

The CHAIRMAN. Can you furnish a copy to the other side so that they may have an opportunity to examine it?

Mr. SHEARN. I will have it sent to the printer to-night.

(The paper was marked "Exhibit 5.")

Mr. SHEARN. I now offer in evidence a paper entitled Schedule E, showing the average freight revenue per ton per mile for each railroad mentioned in Schedule A, which has just been marked "Exhibit No. 5."

Appended to this exhibit is this certificate: "I, Edward A. Mose-
442 ley, secretary Interstate Commerce Commission, do hereby certify that the foregoing table, entitled 'Schedule E,' is a true and correct compilation from all the annual reports filed in said Commission by carriers named and for the years mentioned in said schedule. In testimony whereof," etc.

Mr. CAMPBELL. It is objected to for the same reason, and let the same order be made.

Mr. MOOT. I want to add to these objections, that in compilations like these they are something more than a compilation—of course, where you have not the witness and cannot examine him, he is not under oath, and a gentleman makes a certificate of this kind he may or may not be mistaken, but it cannot be evidence.

Mr. SHEARN. Oh, but those reports, counsel ought to know, state their own compilation, own computation of the rate per ton per mile, and that is simply——

Mr. CAMPBELL. If you bring a certificate from the secretary that any paper is an identical copy of the paper on file, it is competent evidence. If it is an abstract, or a calculation made by somebody and that the secretary seems to think is correct, it is not proper. The course that the chairman has suggested, that these papers are presented and filed for reference covers all that you are legally entitled to.

443 The CHAIRMAN. Now let us see how that applies to this present one. The reports to the Commission of all these carriers are in evidence. In each report in each year is that carrier's statement of the average rate per ton per mile on all their traffic. You have simply taken out these items from the different reports and brought them together?

Mr. SHEARN. That is all. It is simply that the Secretary has used the word compilation in making up the certificate instead of saying extract.

The CHAIRMAN. Wait a moment, Mr. Shearn. I think we may be wrong about that——

Mr. SHEARN. It makes no difference as long as you have ruled that these are to be admitted for this purpose, and with that understanding of the matter I am perfectly content now, because it is easy enough for me to have the certificate corrected at any time, and I am not going to rest on these figures. If this trivial objection is insisted upon I shall follow it up so as to obviate it, but these are all before the court now, and with the statement of the court that they are filed for the information of the court, if they need any further proof, why I am going to adduce that proof. You may be sure of that.

444 The CHAIRMAN. Understand, Mr. Shearn, that we think there is a difference between a certificate—between a copy, extract, or transcript—and a compilation.

Mr. SHEARN. So do I; but that is the form in which the secretary made the certificate, and as he makes them by the thousand, and they are used by you day after day, I assumed that would be accepted. I would make that criticism of it myself, but I know the figures are correct, and they are certified to as correct; and as the objection calls for a change in the form of the certificate, I am going to meet that. But it does not make any difference. They are all before you now, filed under the statement that has been made.

The CHAIRMAN. The fact is already in evidence.

(The paper was marked "Exhibit No. 6.")

Mr. SHEARN. The average freight revenue per ton per mile for each of these railroads that I have already mentioned for the year 1902 was as follows:

Reading, .831; Lehigh Valley, .554; Delaware, Lackawanna & Western, .749; Central Railroad of New Jersey, .951; New York, Susquehanna & Western, 1.007; Erie Railroad Company, .664; New York, Ontario & Western, .804; Delaware & Hudson, .732; Pennsylvania Railroad Company, .590; Baltimore & Ohio Railroad Company, .515.

445 The CHAIRMAN. That is the average rate per ton per mile on all these?

Mr. SHEARN. Yes.

The CHAIRMAN. As shown by their reports?

Mr. SHEARN. Yes; I now offer a paper entitled Schedule F in two subdivisions, the first subdivision showing the average freight revenue per ton per mile for all railroads in the United States for the years 1897, 1898, 1899, 1900, and 1901, for the year ending June 30th, 1901. This average freight revenue per ton per mile on all railroads reporting to your Commission was——

Mr. MOOT. Now, I object to this. I submit, if your honors please, in getting at the question of what this rate is, whether it is reasonable or not and whether there is any discrimination or not here; those are the real questions before us, and the pooling question is simply an incident to the last one; I submit that we are not to try the freight rate of all the railroads in the United States on everything in the United States. I would not need to go any further than the reports of this Commission on that subject to show that nobody living can draw any conclusion from this sort of evidence.

Mr. SHEARN. .750——

446 Mr. MOOT. Wait a moment; there is an objection to this.

The CHAIRMAN. Mr. Mott, you have said it is not competent evidence?

Mr. MOOT. I say that it is not proper or material or relevant evidence on any issue before this commission. It would be competent if it bore on the issue. I am not questioning the source from which it comes. My position is this: Here are over 200,000 miles of railroads in this country. They are drawing everything from fruits in California to coal in the eastern part of this country. Now here is a compilation to show what the freight rate per ton per mile on all those railroads, carrying eight thousand different articles, what it will figure out per ton per mile. Now, your honors have said again and again that the per-ton-per-mile test is at best a mere approximation, even on the same thing, on roads in the same section. Now, how can that be anything to go by? How can it have any materiality or relevancy when you come down to the question of whether these coal roads are charging too much; whether they are discriminating or whether they are not? If we are to go so far in the field as that why of course we would never get through. The reports of this Commission year after year have called attention to

447 the great discrepancy in the different sections of this country in the freight rates, in the New England States and others, and have called attention to the commodities of the different roads when the discrepancies are so great that you, so by your reports, that you can not reconcile them. Are we to have this average in here as having any bearing on coal?

The CHAIRMAN. Don't your argument go to the value of the testimony?

Mr. MOOT. All argument as to the relevancy or materiality go to its value. I say that it has no value. I say that it is so remote and so collateral, that it is introducing a remote and collateral issue that does not bear on the issue before this commission at all.

Suppose he should say that these coal roads were so situated that they handled traffic cheaper than any part of the country, and this coal traffic could be handled cheaper than any other traffic, would it not become material then?

Mr. MOOT. It seems to me that if that fact were before the Commission it would be the very best fact to be before it, and it would speak for itself, and then you would have to go at it to see if they are charg-
448 ing too much on coal or not by comparing it with like commodities in the same section.

The CHAIRMAN. We take it for what it is worth. Proceed, Mr. Shearn.

Mr. SHEARN. The average freight rate per ton per mile for all railroads in the United States reporting to your Commission for the year ending June 30th, 1901, was 7½ mills (.750); for 1900, .729; 1899, .724; 1898, .753; 1897, .798. Now, then, the average freight rate per ton per mile for each group of railroads in the United States, according to the Interstate Commerce Commission grouping——

Mr. MOOT. Just a moment. I want to make another objection. I think this is so incompetent. This is a compilation, and that is all it is——

The CHAIRMAN. This is an extract from our statistical report.

Mr. MOOT (reading). "Is a true and correct compilation from all the annual reports." That is what it reads. Now, I question the competency of it.

The CHAIRMAN. The report itself, of course, Mr. Moot, is competent. This is a mere extract from the report.

449 Mr. MOOT. Now, if your honor please, that brings up this question. Of course, every man on this Commission knows that there are mistakes in those reports. There are mistakes made in your reports. The best staff in the world does not escape mistakes. Now, my position, representing the client I do, is this: That this compilation on somebody's else compilation on somebody's else compilation is not evidence by which we could go in trying an issue before this court.

The CHAIRMAN. It is not a compilation at all. If you had the book here you could read those items.

Mr. MOOT. Yes; but your report is a compilation for somebody by you, and that compilation is a compilation based upon the compilation of various railroads in turn, so that it is a compilation on a compilation, and all of it entirely extraneous to these defendants. A compilation of the reports of these defendants is one thing, a compilation of the reports of other companies is another thing.

The CHAIRMAN. It is made in obedience to the law.

Mr. MOOT. But that does not make it evidence. At the best it is a mere extraneous statement, like a health certificate in the city of Buffalo, which is not evidence in any case at all, although the law requires it to be filed.

450 The CHAIRMAN. It belongs to that class of certificates which we always accept in hearing these cases.

Mr. SHEARN. I take it it is not necessary for us to prove the correctness of your own compilations from these reports as shown by your annual statistics.

Mr. CAMPBELL. You would certainly have to prove every item of it, sir, if it was pertinent to take away the life or property of any individual citizen of the United States, like all public records; there is no use wasting time over it.

Mr. SHEARN. Now, then, the second subdivision of this Schedule F states the average freight revenue per ton per mile for each group of railroads in the United States.

The CHAIRMAN. This is a similar item taken from the same reports?

Mr. SHEARN. Yes, and for the same years; for the year ending June 30th, 1901, it shows as follows: For group one, 1 cent one mill and a half, that is 1.151; for group two, which includes all of the railroads parties defendants, the respondents in this case, .646; for group three, .568; for group four, .641; for five, .802; for group six, .789; for group seven, 1.043; for group eight, .971; for group , 1.018; for group 10, 1.055. I ask to have that marked.

451 (The paper was marked "Exhibit 7.")

Mr. BROWNELL. Those are filed the same as the others?

Mr. SHEARN. Yes. I now offer a paper entitled Schedule B in four subdivisions, showing respectively the average gross earnings from operation per mile of road from all railroads——

Mr. CAMPBELL. I would like to ask for a brief interruption. These gentlemen, a great many of them, are from Philadelphia. It does not seem to me they will be called this afternoon. I would like to ask that they be excused and that they be here in the morning.

Mr. SHEARN. I should like to have them excused. I should like to have the Commission make an order that the witnesses who are in attendance under subpœna and not called shall be excused until the following day and will receive their per diem pay by applying to the clerk of the Commission.

Mr. CAMPBELL. What hour does your honor propose to resume the hearing in the morning?

The CHAIRMAN. We would like, on account of the length of these sittings, to begin at half past ten.

Mr. CAMPBELL. It is perfectly agreeable to us.

452 The CHAIRMAN. The witnesses who have been subpœned to be here to-day and are in attendance will be excused until to-morrow morning at half past ten o'clock.

Mr. SHEARN. And they are instructed to be here?

The CHAIRMAN. They are to be here, and you will be prepared to commence the examination of the witnesses?

Mr. SHEARN. Yes.

The CHAIRMAN. We will only sit a few moments longer now.

Mr. SHEARN. I should like to have the witnesses understand they are not to receive a separate and new subpœna for to-morrow morning, but that their per diem compensation for attendance on the following day is with the clerk and he will give it to them on applying to him.

Mr. GOWEN. Certain subpœnaes were served upon certain officers of the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company. I would like to have an understanding with Mr. Shearn in regard to the matter, as it will save unnecessary attendance. One of the witnesses served is David G. Baird, who has been served as secretary of the Lehigh Valley Railroad Company and also secretary of the Lehigh Valley Coal Company. He has been subpœnaed to bring with

453 him all contracts for the purchase or transportation of anthracite coal entered into since 1901. I presume it will be sufficient if those tracts are here.

Mr. SHEARN. Certainly; that is all I want.

Mr. GOWEN. I do not mean to say by that if Mr. Baird were here that he would under my instructions produce them. They will be in court, so that the absence of Mr. Baird will not put you to any inconvenience.

Now, a subpœna has also been served on Mr. Alderson, who is the treasurer of both the railroad company and the coal company, to produce certain books of account and so on. Subsequently a subpœna was served upon the auditor, who is the proper officer, as I understand, and in whose custody the books are. So, I do not suppose it will be necessary to bring Mr. Alderson.

Mr. SHEARN. If the auditor has the books I will excuse Mr. Alderson.

Mr. GOWEN. Now, coming down to the auditor, Mr. Shearn, the subpœna which has been served upon the auditor of the Lehigh Valley Company, Mr. George M. Wilson, requires him to be present to-morrow at 11 a. m. with all the books of account, ledgers, journals, and cash books, and all contracts for the purchase of coal. Well, I do
454 not know how those books will get here. We have got to hire a freight car to bring them over, and certainly we can not produce all the books of account of the company.

Mr. SHEARN. I will say with reference that, that I shall endeavor to make this as little inconvenient as possible, and therefore, if it will require a smaller number of books, as I should think would be the case, to cover the transaction, say during the months of April and May, 1901, and April and May, 1902, and January and February, 1903, that would be sufficient.

Mr. GOWEN. But can't you——

Mr. CAMPBELL. As far as we are concerned it would not save us.

Mr. SHEARN. Would it save your client, Mr. Gowen?

Mr. GOWEN. I do not know, Mr. Shearn; I fancy it would not be much saving, because I suppose the transactions of those months run into——

Mr. SHEARN. However, we can confer about that afterwards without taking up the time of the Commission.

Mr. GOWEN. Well, Mr. Shearn, we can not possibly get those books here to-morrow morning.

Mr. SHEARN. Well, I do not think we will be ready for them
455 to-morrow morning. I will excuse the production of your books until the following morning, but I would like to have the auditor here to-morrow afternoon.

Mr. SHEARN. What I want and what I intend to prove here in some way or other before we get through is what these railroad companies have actually received for the transportation of anthracite coal during say the moths of April and May, 1901, and April and May, 1902, and January and February, 1903. I think that will be sufficient, and if they can see their way open to facilitate that, why, I shall be very glad to receive suggestions from them.

Mr. MOOT. You mean the gross sum?

Mr. SHEARN. The net sum. When these contracts are produced, these 65 per cent purchase contracts, and are put in evidence, there will be a great many of them, and I propose at the outset to take, say, one,

two, three, four, or perhaps ten of the different collieries with whom those contracts are made and ask them to trace through their books for this Commission the entries showing the purchase of that coal and the payments made for the transportation of that coal and from whom received,
when received, and the amount paid to the purchaser—to the ven-
456 dor of the coal for the original purchase. Then we will have the transaction complete, and we shall make those instances just as few as possible; but we do propose, if we are permitted to do so, to trace through their books divers representative transactions with different collieries operating under these 65 % contracts, and show to this Commission that the actual amount received per ton for transportation of that coal instead of being what their schedule calls for, 1.75 or 1.55 per ton, as the case may be, is 1.25 a ton or less.

Mr. CAMPBELL. All right; you enjoy yourself trying to prove that.

The CHAIRMAN. I would suggest that the Commission adjourn until to-morrow morning at half past ten.

The Commission thereupon, at 4.30 o'clock, adjourned to meet to-morrow, April 22nd, 1903, at 10.30 a. m.

457 NEW YORK CITY, *April 22nd, 1903—10.30 a. m.*

The CHAIRMAN. You may proceed, Mr. Shearn.

Mr. SHEARN. I offer paper, entitled "Schedule B," in four subdivisions, showing, first, average gross earnings from operation per mile of road for all railroads in the United States for five years, beginning in 1897 and ending June 30th, 1901.

(The same is hereto annexed and marked "Complainant's Exhibit No. 8.")

The CHAIRMAN. That statement is from the Commission's statistical report?

Mr. SHEARN. Yes, sir. The first subdivision of this schedule shows that for the year ending June 30, 1901, the average gross earnings from operation per mile of road for all the railroads in the United States was $8,123. Now, referring to Schedule A, which was put in yesterday, it appears that the average gross earnings from operation per mile of road for the Reading is $27,572; for the Lehigh, $17,567; for the D., L. & W., $27,516; for the Central Railroad of New Jersey, $21,899; for the
Susquehanna, $11,854; for the Erie, $18,784; for the Ontario,
458 $11,078; for the D. & H., $17,691, and for the Pennsylvania, $25,527. They average more than double and in some cases three times the average gross earnings from operation for all other railroads in the United States. I offer now paper and title——

Mr. CARR. Where were the figures from that last paper taken from?

Mr. SHEARN. From the annual reports of carriers named, filed with the Commission.

Mr. CARR. I object to that.

Mr. CAMPBELL. I want to add to the objection that they are immaterial to any issue involved here.

Mr. SHEARN. I offer paper entitled "Schedule C," in four divisions, showing, first, the average gross earnings from operation per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping, for five years, ending with 1901; sec-

ond, average gross earnings from freight per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping; and, third, average operating expenses per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping; and, fourth, average net income from operation per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping.

459 Mr. MOOT. I want to make an objection. It involves the question of what theory we are trying this question on. I take it that in a case of this character the law is not different from what it would be if you were trying the question of whether a common wagoner, carrying goods for hire in this city, was overcharging some patron or was discriminating against certain men in favor of certain other men. Under such circumstances, certainly no court for a moment would listen to a compilation.

Mr. CAMPBELL. I would like to make this point: Why should he not discriminate? Has not he a right to if he wants to?

Mr. MOOT. Probably he has a right to discriminate if he wants to, at common law, but I am going under the theory that we are under the interstate-commerce law, which has made provisions about that, and so far as it has made them we are subject to them, so far as this is interstate commerce.

Now, in a case like that, suppose a compilation just like this from some Government report, very carefully got together—I will say from the Bureau of Statistics—about the average price of service by a common wagoner in other cities of the country, and all that sort of thing, was offered in evidence, would it be received? Certainly not. Why

460 not? It would not be received because the question of whether the price is extortionate or not depends on the number of men he employs, the wage the men get in the different cities, the amount of work they can get to do in the different cities, and the circumstances and conditions are so multifarious and different that statistics from all over the country do not touch a given city of the country.

The chairman of this Commission put that very aptly in dealing with what the rate should be from a creamery in Nebraska to Denver, where he compared the rates, showing that for the greater distance the rate to Denver was high, and then comparing other rates and showing that in some cases for the same mileage the rate was not half as high. Yet he said that did not prove that the rate to Denver was unreasonable. Why? Because there was no proof before him that other railroads did not charge the same rate; and it was admitted that they did. Everybody was charging the same rate to Denver. On that statement of facts why was not that rate denounced as discriminating against a locality, or why was not that rate denounced as unreasonable and unjust? Because it was said by a unanimous Commission in a short, clear opinion, that there was no evidence before the Commission upon which you could say that

461 the conditions were substantially similar and you could not condemn a rate unless you could say that the conditions were substantially similar. What is my friend trying to do? He is trying to put in a lot of figures from a good source. What is necessary before they could go in? It is necessary that we should have the conditions

and circumstances underlying these various groups, underlying these various services on eight thousand different items. Whether they are the same as handling, as to number of men employed, as to whether there is a return load, and a thousand other things your honors have commented upon before. It is essential before this can be received in any body governed by rules of evidence that you should have evidence that the conditions are substantially the same, so that you can say, the conditions being substantially the same, the service should be charged for at substantially the same rate. You have no such proof here, and in what my friend said yesterday there was nothing to indicate that he expected to make such proof. It is not possible, because the conditions are so absolutely dissimilar. As to the different items, as to the different sections of the country, as to the number of men employed, as to the rate of wage, and a thousand and one things that make service in the New England States carry the rate up to over a cent a mile. In the
462 Mississippi Valley, where conditions are dissimilar, the rate is not more than half of that, and yet both rates are reasonable. Now, I challenge this proof and state my grounds of objection briefly, that this evidence is not competent without evidence that the conditions are substantially similar that have given rise to this group of statistics which he proposes to put in.

Mr. SHEARN. Before there is a ruling on that point——

The CHAIRMAN. We do not care to hear you upon it, Mr Shearn. We regard a comparison of rates as ordinarily competent. The Commission has ordinarily accepted statistics of this character in investigations similar to this, and we are disposed to allow these figures to go in, as is sometimes said, for what they are worth. We perfectly realize their limited value unless they are fortified with other facts showing similarity of conditions, but it seems to us not improper to allow those figures to be presented.

Mr. SHEARN. The court will of course recollect that such figures and such comparisons furnished the precise basis for the finding in the Coxe Brothers case as to what was a reasonable rate. I will ask to have this marked. (The paper was marked "Exhibit No. 9.")

463 Mr. MOOT. The Commission received statements in two ways yesterday, some of them as evidence and some of them as statements which were allowed to be filed and marked with exhibit numbers, but with the understanding that they were not evidence, unless made evidence afterwards. I want to know what this is.

The CHAIRMAN. What does this paper show?

Mr. SHEARN. The average gross earnings from operation per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping; second, average gross earnings from freight per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping; third, average operating expenses per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping; and fourth, average net income from operation per mile of road for each group of railroads in the United States, according to Interstate Commerce Commission grouping.

Mr. ROSS. What is the certificate?

Mr. SHEARN. The certificate is: "I, Edward A. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that the
464 foregoing table entitled 'Schedule C' is a true and correct compilation from all annual reports filed with said Commission by carriers operating throughout the United States, for the years named in said schedule."

Mr. ROSS. That goes in as a memoradum.

The CHAIRMAN. As we understand it, that is not a compilation prepared for the purpose of this investigation.

Mr. SHEARN. It is not a compilation at all.

The CHAIRMAN. It is an extract from the Commission's Statistical Report?

Mr. SHEARN. It is.

The CHAIRMAN. Anyone could open the volume and take those figures out?

Mr. SHEARN. Yes, sir; unfortunately the secretary used the word "compilation" instead of "excerpt."

Mr. CAMPBELL. Why have you not offered the report?

Mr. SHEARN. I have offered the reports. They have been offered and are before the court.

Mr. MOOT. The reports of the companies; not of the Commission.

Mr. SHEARN. The reports of the companies to the Commission.

465 Mr. CAMPBELL. We are talking about the reports of the Commission.

Mr. SHEARN. If desired, I will offer the volumes of your Statistical Reports, but I did not wish to encumber the records with them.

The CHAIRMAN. We might take judicial notice of our own official communications to Congress.

Mr. SHEARN. These, if the court please, are simply specific items and parts from these reports.

The CHAIRMAN. They are not compilations?

Mr. SHEARN. In no sense compilations. Absolutely not. They are excerpts—part of the entire report, and instead of burdening the record with the entire report, as stated yesterday, I am simply going to offer the parts of the report we deem significant.

Mr. MOOT. I want to be clearly understood about this. I do not claim that that kind of evidence would not be the very best evidence in the world on many issues, but I claim that that sort of compilation by anybody—I do not care whether it is the Supreme Court or the Pesident of the United States, I do not care how authoritative the source—my claim is that that general gathering together of figures about
466 what the gross earnings per mile of railroad in various parts of the country are, has no bearing, no relevancy, no materiality, no competency on the issues here which, sharply cut, are, first, is our rate unreasonable; and secondly, does it discriminate, and if it does discriminate, this question of pooling is a mere incident to that question. Those questions are the only legitimate questions in this case, as I understand it, and I deem it very important that this record shall show clearly whether this Commission rules that this is evidence on those issues, or whether it simply rules that it is a statement for information that may or may not be evidence, and that it does not receive it as evidence on these sharp-cut issues.

Mr. SHEARN. We offer it as evidence on these sharp-cut issues and refer to the holdings of the Commission for years back, that it is competent and relevant, beginning with the Coxe case and being followed consistently down.

The CHAIRMAN. We will receive it.

Mr. SHEARN. Referring to these two schedules—without reading all of them—I call attention to these features. We have already seen the average gross earnings from operation throughout the United States is about $8,000 per mile. On turning to the groups we find that
467 Group II exceeds all other groups in the United States—Group II including the respondent railroad companies—and that the average gross earnings for this group amount to $17,346. The gross earnings from operation per mile of road as compared with the total throughout the United States of $8,000——

Mr. CARR. Pardon me. Is Group II made up entirely of these companies?

Mr. SHEARN. No, sir; but it includes them and the West Shore and New York Central.

The CHAIRMAN. Mr. Shearn, we all understand that these figures are made up on a basis per mile of line, not taking into account miles of track.

Mr. SHEARN. Miles of line; yes, sir.

The CHAIRMAN. So, of course, in this second group, which takes in the most populous part of the United States, where the volume of traffic is very great as compared with some other sections of the country, the gross earnings per mile of line would of course be very much in excess of the average in the United States.

Mr. SHEARN. Naturally, just as the gross expenses from operation would be very much larger. Then, an important consideration
468 would be what the net is, and in coming to the net I desire to first show the gross receipts and then the gross expenses.

Mr. MOOT. Right here I want to indicate the objection to this, as evidence, more clearly, perhaps, than I have. This contains passenger-service earnings, and about this city and one or two other great ci i s, we have the only parts of the country—anybody that looks into the subject supposes that no railroad makes anything out of passengers—but this passenger service is profitable. There are a few miles right around the city where it is profitable to carry passengers. They can be carried at a small sum and money can be made out of them. Still, an enormous number of men are necessarily hired to handle these passengers. Of course we all know that coal cuts a very small figure in these gross earnings around this city, and almost infinitesimal figure, when you get down to it. To say that these figures of gross earnings, not taking into account the number of men employed for the passengers or freight, is any evidence of whether our charge on coal is extortionate or not or discriminatory——

The CHAIRMAN. We realize all those differentiating features, Mr. Moot. The evidence may be of very little significance, but the courts, as well as the Commission, seem to hold that a comparison is a
469 legitimate method of investigating the reasonableness of a railroad charge.

Mr. MOOT. My recollection was that Justice Brewer, in a quite late opinion, held, that where statistics were as broad as these they were utterly unreliable and could not be used.

The CHAIRMAN. That may be. They may not warrant any finding of fact in a specific case.

Mr. MOOT. Then it seems to me they should not be received.

The CHAIRMAN. Well, perhaps not, but we are inclined to allow them.

Mr. SHEARN. Meeting that last suggestion and in order to differentiate between the passenger traffic and the freight traffic, which are both included in the total, as he says, the next group of figures is directed solely to earnings from freight. If the court will excuse me a moment, the books are here. (Refers to books.) Now, referring to the average gross earnings from freight for all railroads in the United States, per mile of road, we find——

470 Mr. MOOT. I suppose this may be considered under the same objection.

The CHAIRMAN. Very well.

Mr. SHEARN. We find that for the United States the figure is $5,804. The average gross earnings from freight per mile of road for the whole United States is $5,804. For Group II, including these defendants, it is $12,525. For the Reading—and by the way, Group II exceeds every other group in the United States—for the Reading $22,405, as against $5,804 for the whole United States and for the entire Group II, $12,525; and in Group II are included the Reading figures. For the Lehigh $14,292, which is $2,000 more than the average for Group II and $8,000 more than the average for the United States. For the D., L. & W. $20,410, as compared with twelve and five; for the Central of New Jersey $17,099; for the New York, Susquehanna & Western $9,065, which is less than the average for Group II but more than the average for the whole United States; for the Erie $14,116; for the Ontario $8,885; for the D. & H. $15,184, and for the Pennsylvania $18,771.

Now, what were the average operating expenses per mile of
471 line for all the railroads in the United States for these five years? They are substantially the same from year to year. I will take the last year shown here, the year ending June 30, 1901. The average operating expenses per mile of road for the whole United States was $5,269; for Group II $11,269; for the Reading $15,697, and so on down—the Lehigh thirteen, the D., L. & W. seventeen, the Central twelve, the Susquehanna six, the Erie twelve, the Ontario seven, the D. & H. nine, and the Pennsylvania sixteen.

That shows that it costs these railroads a great deal more to carry freight than the other railroads in the group and the other railroads throughout the United States, and it is only fair, of course, to put those figures in while the other figures go in. But coming to the average net income from operation per mile of road for all the railroads in the United States for the same period, it is $2,854. For Group No. II, including the respondents, it is $6,086. Group II exceeds all other groups. For the Reading it is $11,875, for the Lehigh $3,596, for the D., L. & W. $10,035, for the Central $9,743, for the Susquehanna $5,198, for the Erie $5,851, for the Ontario $3,506, for the D. & H. $8,367, for
472 the Pennsylvania $8,991; the Reading being nearly double that

States, and the D., L. & W. being nearly twice that for Group II and four times that for the whole United States.

Mr. MOOT. I think you either misread the Lehigh or your statistician made a tremendous blunder.

Mr. SHEARN. No; there is this to be said of that. They charged so much to maintenance of way and structure and new locomotives that their figures are brought down.

I offer now paper headed "Schedule D," showing, first, the average percentage of operating expenses to gross earnings for all railroads in the United States, and then for each group, and then the average percentage of net earnings to gross earnings for all railroads in the United States.

(The paper is marked "Exhibit No. 10.")

Mr. BROWNELL. What is that made from?

Mr. SHEARN. The same source.

The CHAIRMAN. Of course you understand all this class of evidence is taken under the same objection?

473 Mr. SHEARN. Yes, sir; that is of course understood.

Mr. CARR. Is there any objection to having it appear on the record what railroad companies are included in Group II, so that we may understand what we are comparing with?

The CHAIRMAN. That is a territorial group.

Mr. CARR. It might save a great deal of trouble if that appears on the record.

Mr. SHEARN. I amagine any of the commissioners can tell the companies. It includes all the respondents and the New York Central and West Shore.

The CHAIRMAN. Permit me to say that any counsel for the carriers desiring to examine the last report or any previous report of the commission will be furnished one by the secretary. They show how these figures are made up.

Mr. CARR. I would be pleased to have one.

Mr. SHEARN. These schedules show the percentage of operating expenses to gross earnings, and referring to Schedule A, which was put in yesterday, and comparing these different subdivisions with one another, we find that the percentage for the whole United States is 64.86,

474 for Group II 64.91, for the Reading 56.93, for the Lehigh 79.53, for the D., L. & W. 83.53, for the Central 56.58, for the Susquehanna 56.15, for the Erie 68.84, for the Ontario 68.36, for the D. & H. 52.70, for the Pennsylvania 64.78.

Mr. MOOT. What "Central" is that, Mr. Shearn?

Mr. SHEARN. The Central of New Jersey. I offer schedule entitled "Schedule Q," showing the proportion that the mileage of loaded freight cars bears to the total of freight-car mileage for each of the railroads mentioned in Schedule A during the year ending June 30, 1902.

Commissioner PROUTY. Please read that once more.

Mr. SHEARN. The proportion that the mileage of loaded-freight cars bears to the total of freight-car mileage for each of the railroads mentioned in Schedule A during the year ending June 30, 1902, meeting Mr. Moot's suggestion about empty cars. I suppose we will hear a great deal about that before we get through.

(The paper referred to is marked "Exhibit No. 11.")

Mr. SHEARN. The proportion that the mileage of loaded cars bears to the total of freight car mileage for the United States is 69.39; for
475 Group II, 65.23; for the Lehigh, 68.61—carrying more loaded cars than the average for the entire group of which it is a member, and carrying very nearly the same mileage of loaded cars that all the railroads of the United States do; for the D., L. & W., 68.61; for the Central of New Jersey, 61.71; for the Susquehanna, 55.70; for the Erie, 68.70; for the Ontario, 60.57; for the D. & H., 68.25, and for the Pennsylvania, 64.73.

I offer a paper, entitled "Schedule L," showing for the railways mentioned in Schedule A, being the respondents, and for each group in the United States, and for the entire United States, the average number of tons of freight per freight locomotive carrried by each railroad mentioned in Schedule A during the year ending June 30, 1902.

Mr. CARR. Is that taken from the same reports?

Mr. SHEARN. Yes, sir.

(The paper is marked "Exhibit No. 12.")

Mr. SHEARN. Comparing these with Schedule A we find the average number of tons of freight per freight locomotive carried throughout the United States was 47,692; for Group II, 62,124.

Commissioner PROUTY. What is that?

476 Mr. SHEARN. The average number of tons of freight per freight locomotive.

Commissioner PROUTY. Does that mean for the whole year?

Mr. SHEARN. For the whole year; yes, sir; per freight locomotive; 47,000 for the United States, 62,000 for Group II, and for the Reading, 66,449.

Commissioner PROUTY. That must be the net tons of paying freight and not the gross weight of the train.

Mr. SHEARN. That is the way I understand it; yes, sir. For the Lehigh Valley, 43,481, which is much lower than the entire group; for the D., L. & W., 35,462, which is less than for Group II and less than for the whole United States; for the Central of New Jersey, 66,106, which is more than the average for Group II, and very considerably more than for the whole United States; for the Susquehanna, 49,140; for the Erie, 51,263; for the Ontario, 4,735; for the D., & H., 51,505, and for the Pennsylvania 61,815. Thus it is seen that all these respondent railroad companies, with the exception of the D., L. & W., exceed the average for the whole United States.

I offer paper entitled "Schedule N," showing average length of
477 haul per ton of freight on each of the railroads mentioned in Schedule A during the year ending June 30, 1902, and showing the average length of haul for all railroads in the United States and the average length of haul for each one in the group.

(The paper is marked "Exhibit No. 13.")

478 Mr. SHEARN. The average haul per ton of freight carried on the Reading for the year ending June 30th, 1902, is 88 miles and .96; for the Lehigh, 138.11; for the Delaware, Lackawanna & Western, 154.35; for the Central Railroad of New Jersey, 76.17; for the Susquehanna & Western, 69.25; for the Erie, 142.84; for the Ontario, 149.98; for the Delaware & Hudson, 101.23; for the Pennsylvania, 147.61, and for the Baltimore & Ohio, 193.63. Now, then, bearing in mind that

Schedule A of yesterday showed the average rate per ton per mile for all railroads in the United States was 7½ mills, and considering the rate shown on tables 1 and 2 that were put in evidence as to the charge on anthracite from mines to tidewater, I call attention to subdivision 2 of this schedule, showing the length of haul per ton of freight for all railroads in the United States for the year ending June 30th, 1902, to be 135.03, which is greater than the average haul shown on schedule 1, and very nearly the average haul shown on table 2.

Now the average length of haul per ton of freight for each group in the United States, picking out group 2, is 114.15, and the highest group is group No. 10, with 238.77 miles; the lowest, group 1, in the New England group, of course, is 84.66.

479 I offer paper entitled Schedule M, showing the average number of tons per train on each railroad mentioned in Schedule A for the year ending June 30th, 1902, and the average number of tons of freight per train for all railroads in the United States, the same being on groups taken from the same source.

This table shows that the Reading carried on an average 282.15; Lehigh Valley R. R. Co., 466.83; Delaware, Lackawanna & Western, 374.69; Central Railroad of New Jersey, 439.50; New York, Susquehanna & Western, 216.94; the Erie, 380.64; Ontario, 235.98; Delaware & Hudson, 346.12; Pennsylvania, 501.54; Baltimore & Ohio, 406.33.

Now, then, the principal carriers there of coal, of course, are the Reading, Lehigh Valley, Central New Jersey, and the Delaware, Lackawanna & Western. Those figures run from 282 to 466, while the average for the entire United States is 281.26 tons. All of the railroads in Schedule A, with the exception of the Susquehanna & Western, carried a greater number of tons of freight per train than all of the railroads in the United States, and the Lehigh carried nearly twice as many tons per train than for the whole United States. So did the Central of New Jersey.

480 The average for group 2, including these railroads, is 362.10.

(The paper was marked "Exhibit No. 14.")

Mr. SHEARN. I offer paper entitled Schedule S, showing the percentages of expenditures of railroads mentioned in Schedule A, for maintenance of way and structure, compared with their total operating expenses for the year ending June 30th, 1902, and then for all the railroads in the United States and for each of the groups, being taken from the same source.

(The paper was marked "Exhibit No. 15.")

Mr. SHEARN. The Reading's percentage of expenditures for maintenance of way and structure—and you will bear in mind that the charges for maintenance of way and structure include all the charges for the laterals that Judge Campbell was talking about yesterday, and include all the charges for the terminals, which two items are the ones that have always been relied upon in the past as justifying a somewhat greater rate for anthracite than upon bituminous——

Mr. MOOT. Doesn't that depend upon the system?

Mr. SHEARN. It appears in the various reports of each of the companies that they include in their expenditures for maintenance of

481 way and structure the expenditures for laterals and terminals.

Mr. MOOT. I guess you will find that depends on a good many circumstances. In some it does and some it does not.

Mr. SHEARN. Now this percentage for the Reading is 18.04; Lehigh Valley, 23.60; Delaware, Lackawanna & Western, 24.48; Central of New Jersey, 16.01; New York, Susquehanna & Western, 20.98; Erie, 15.06; Ontario & Western, 22.27; Delaware & Hudson, 18.51; Pennsylvania, 19.05; Baltimore & Ohio, 18.95; whereas for the entire United States the percentage is 22.42, and for group 2, 19.64.

I offer paper entitled Schedule P, showing the average number of pounds of fuel consumed per ton per mile by freight locomotives on each of the railroads mentioned in Schedule A, during the year ending June 30th, 1902.

(The paper was marked "Exhibit 16.")

Mr. SHEARN. The figures for the Reading were not available and not stated in the report ending June 30th, 1902, but for the Lehigh Valley the
482 average number of pounds of fuel consumed per ton per mile by freight locomotives was .46; Delaware, Lackawanna & Western, .59; Central New Jersey, .47; Susquehanna, .86; for the Erie, .53; for the Ontario & Western, .73; for the Delaware & Hudson, .47; for the Pennsylvania, .43; for the Baltimore & Ohio, .52. The same figures for the groups and for the entire United States were not filed and were not available.

I offer a paper, Schedule G, purporting to show the average cost of freight per ton per mile for each railroad mentioned in Schedule A, which result is obtained by multiplying or figuring into the rate per ton per mile for each of the railroads, which was proved yesterday, the percentage of operating expenses; this compilation of these figures were gotten up for us by Mr. H. C. Robinson, who has attached an affidavit to the figures, as follows:

"H. C. Robinson, being duly sworn, deposes and says that he is and has been for five years a clerk employed in the Division of Statistics of the Interstate Commerce Commission; that the foregoing Schedule G was computed by him from the statements set forth in the annual reports filed with said Commission by the carriers named for the years mentioned in
483 said Schedule G, and that the said computation is correct. Subscribed and sworn to this 15th day of April, 1903."

I realize that if the objection is made that I shall have to produce Mr. Robinson to prove the computation, but I thought I could save his coming from Washington, so I obtained his affidavit.

Mr. MOOT. If your honors please, without desiring to be technical, I think we better make the objection. It is of a good deal of importance to us that we have a chance to cross-examine Mr. Robinson. We shall probably have to have one or more sessions in Washington. He won't have to come here. This proof can be reserved.

The CHAIRMAN. If that objection is taken it must be sustained.

Mr. MOOT. I have no objection to his marking it for identification.

Mr. BROWNELL. Will you kindly furnish us with a copy, Mr. Shearn?

Mr. SHEARN. Yes; I am having all these printed. I ask to have it marked for identification.

(The paper was marked "Exhibit No. 17" for identification.)

484 Mr. SHEARN. I ask to have marked for identification—because I assume the same objection will be made—a paper entitled Schedule H, showing the average cost of freight per ton per mile for all railroads in the United States, the result obtained in the same way, and the

average cost of freight per ton per mile for each group, the result being obtained in the same way.

(The paper was marked "Exhibit No. 18" for identification.)

The CHAIRMAN. I think there should be an opportunity to examine Mr. Robinson.

Mr. SHEARN. I do not say that it is binding; it is an estimate that I desire to make an argument upon when we come to the conclusion of the case, and we proved yesterday the average rate per ton per mile. Now, then, we have shown the percentage of operating expenses, gross earnings——

The CHAIRMAN. But the freight and passenger business are not kept separate.

Mr. SHEARN. The answer to that is that the passenger business of more expensive, so that these figures would be the maximum against us.

485 Mr. MOOT. If the gentleman has found out a way to get at the cost of carrying freight he has done something that Mr. Fink could not do, and that every expert that has ever figured on it could not do, and that this Commission has reported many times could not be done, and that the courts have said could not be done; but I think every railroad man in this room will feel that he has got one thing out of this hearing if he has got at that.

Mr. SHEARN. Let me recall to the attention of the gentleman that until the Cox Brothers' case was up for hearing before your Commission the reports of the Lehigh Valley Railroad Company year after year showed the cost of carrying anthracite coal from their mines to tide water, and showed the cost to be per ton 85 cents, and whereas they were charging a dollar and ninety cents at that time. Now, when that case came on for hearing in that year for the first time they omitted from their annual reports the cost of carrying anthracite to tide water, and Mr. Gowen, in trying the case, said that he could not prove the cost for that specific year, but the court permitted him to put in their esti-

mate of cost for all these other years, and, as I say, it was 85

486 cts. a ton. Now, then, we find, reducing that to per ton, it tallies almost identically—it tallies most surprisingly—with figuring this percentage by operating percentage to gross earnings into the rate we proved yesterday per ton per mile for carrying——

Mr. CAMPBELL. You are referring to the testimony in the Lehigh Valley case that was introduced before the Commission and relied on by Mr. Gowen, who was of counsel with Cox Brothers. I want to ask the gentleman if he is aware of the fact that it was demonstrated in the subsequent testimony taken in preparation for the hearing before the circuit court of the United States that that was entirely exclusive of all fixed charges of any kind, and that the actual cost legitimately computed was 1.55, which was an amount greater than the Commission at that time saw fit to award.

Mr. SHEARN. We all know, who know anything about that, that something happened to Cox Brothers after the decree of your court was made, and a great many different things were shown when they got ready to bring this into the circuit court of the United States, and as a result

so many remarkable things were shown that the case never came

487 into the circuit court of the United States.

Mr. CAMPBELL. If your honor please, Mr. Baer advises me that he has a very important engagement to-morrow, Thursday, on account of which he desires your indulgence for his excuse. Counsel seems to me quite willing, he is entirely decorous in the matter, but he fears somewhat the personal responsibility that may befall him in case it should happen that he has no other witness. We are going to ask the indulgence of the Commission, if that accident should occur.

The CHAIRMAN. What is the application?

Mr. SHEARN. The application is to excuse Mr. Baer until Friday, to which I have consented, but Mr. Thomas also asks to be excused until Friday, and I was anxious to have one or the other here on Thursday, but if Mr. Baer can not be here Thursday, why, we will arrange to examine him Friday.

The CHAIRMAN. Very well.

Mr. SHEARN. I offer in evidence a paper headed Schedule J, showing the annual tonnage of anthracite coal with the companies' material excluded, originating on each road mentioned in Schedule A, car-
488 ried on each of said roads, and also by the Erie & Wyoming Valley Railroad Company and the Delaware, Susquehanna & Schuylkill Railroad Company, from 1896 to 1902, inclusive; and also showing separately the total annual tonnage of anthracite coal on all the roads mentioned, excluding the Baltimore & Ohio. The first group includes the Baltimore & Ohio and the second group excludes it. These are taken from the same source—these reports of the various carriers to the Commission, taken from the annual reports made by each of the carriers.

Mr. BROWNELL. Do you mean to say, Mr. Shearn, that this statement is on the annual tonnage of anthracite coal that originated upon the roads mentioned, exclusive of any originating——

Mr. SHEARN. Yes.

Mr. MOOT. It does not show so on the statement; I do not think he has a proper appreciation of the statement.

Mr. SHEARN. The report says, with companies' material excluded, and originating on each road.

Mr. BROWNELL. The annual reports do not.

Mr. SHEARN. Well, I found it in the annual reports and they
489 are separated, and it is certified to as being correct. The totals clearly show that the other freight is excluded, because the total, for instance, for 1902——

Mr. BROWNELL. No; my question was whether they contained merely a statement of the coal tonnage that originated on the respective roads, excluding from that statement coal carried by the roads not originated on their roads.

Mr. SHEARN. I say it does.

Mr. BROWNELL. I think it will prove you are incorrectly informed in regard to that.

Mr. SHEARN. Excluding Baltimore & Ohio for the year 1902, it was thirty-six millions, which shows that it does exclude the other coal, coal not originated on the road, because we know the total tonnage carried was greater than thirty-six million ton' in that year.

Mr. BROWNELL. Same objection on the same grounds as before.

The CHAIRMAN. Well, I suppose the total anthracite coal production is known approximately; what it is on these roads must be a
490 matter of almost common knowledge.

Mr. SHEARN. We have the Government reports on it, and I supposed they would be accepted. I see now they won't, and it will have to be proved in some other way.

Mr. BROWNELL. It is not a Government report.

Mr. SHEARN. No; it is a report of the company to the Commission.

Mr. BROWNELL. It purports to be. We want it verified. It does not agree with our recollection.

Mr. SHEARN. Yes; that applies to all of these; all of that information, of course, is more readily ascertainable by the respondents than by anybody else, but these figures are shown by their reports and would seem to be reliable.

The CHAIRMAN. I understand this paper to be an extract from so much of the reports of the respondent roads as shows the amount of coal originating on each one of their lines?

Mr. SHEARN. Why, yes; their annual reports show that.

491 Mr. BROWNELL. The certificate attached is a certificate that the table is a true and correct compilation from certain annual reports.

Mr. SHEARN. The same as all the rest of them.

Mr. BROWNELL. Then the compilation, the statement of tonnage, may very well be, without carrying with it the description given here at the heading—I do not know whether that is right or not; it does not agree with our recollection of the facts; we simply don't want to burden the record here with a lot of data that is not perfectly accurate.

Mr. SHEARN. Well, I think it is essentially correct. It has been carefully prepared.

Mr. BROWNELL. It would seem to be a very simple matter to mark them for identification the same as the two or three previously offered, and leave them until the subsequent session at Washington, when an opportunity will be afforded for examination, when, if desired, Mr. Shearn can place the person who certified to them on the stand.

The CHAIRMAN. There can be no objection to that course if
492 there is any real doubt as to the accuracy of the figures.

Mr. BROWNELL. Of course we have not had a full opportunity for examining these figures; but it appears to us they are not correct.

The CHAIRMAN. Is there any objection to having this paper marked for identification, with the view to having the figures verified before it is received in evidence?

Mr. SHEARN. I am perfectly content with that, your honors.

(The paper was marked "Exhibit No. 19" for identification.)

Mr. SHEARN. I thought it was verified when we sent it down to your Commission and had it verified.

The CHAIRMAN. Well, I presume these figures are correct, and it is easy enough to verify them.

Mr. BROWNELL. It is easy enough to leave them and give us an opportunity to examine them. Very likely the statement given by the notary is correct; we should like an opportunity to cross-examine him, however.

The CHAIRMAN. The paper will be marked for identification; we will take that course.

493 Mr. SHEARN. Schedule J, being Exhibit No. 19, is marked for identification.

Then the same course would necessarily be taken with the paper I am now to offer, entitled Schedule K, which shows the percentage of tonnage annually on each of said railroads mentioned in the subdivision 1 here, being the total shown on Schedule J, the paper just marked for identification, and the total annual tonnage shown in subdivision 2 of Schedule J; that is, the total annual tonnage on anthracite coal on all of those railroad companies, and that covers the years 1896 to 1901, inclusive, and bears upon the charge made that in 1896 the roads got together and made an allotment of tonnage, and bears on the charge made that they are pooling their earnings from freight and the freight carrying in substantially the same proportions year after year.

I ask to have that marked for identification.

(The paper was marked "Exhibit No. 20" for identification.)

Mr. BROWNELL. Is this statement based upon this?

Mr. SHEARN. Upon J; yes, sir.

494 Mr. BROWNELL. Now, this speaks of the percentage of tonnage of anthracite coal upon these roads; that would seem to include all the tonnage of anthracite coal, yet you say it is based on the statement of the portion of anthracite coal which originates——

Mr. SHEARN. Yes.

Mr. BROWNELL. So that there is a conflict there?

Mr. SHEARN. No; I do not think so. This shows the percentage of tonnage annually on each of the roads mentioned in subdivision 1 here—of showing the tonnage in Schedule J.

Mr. BROWNELL. Then it does not mean the total tonnage on each of those roads, and it is based on only the portion of it originating on the roads?

Mr. SHEARN. Originating on the roads?

Mr. BROWNELL. It would not be so considered from the heading.

Mr. SHEARN. I offer paper entitled Schedule T, showing first the amount of stocks and funded debt per mile of line on June 30th, 1902, on each of the railroads mentioned in Schedule A and on all of the railroads in the United States and on each group of railroads in the

495 United States which may furnish some clue as to why the rates on anthracite coal on the respondent roads are so much higher than the rates on other commodities and the other rates prevalent throughout the United States.

The CHAIRMAN. That is taken from the statistical reports?

Mr. SHEARN. Yes, sir.

(The paper was marked "Exhibit No. 21" for identification.)

Mr. SHEARN. Now, first I desire to call your attention to the average amount of stock on funded debt per mile of line for all railroads in the United States, the same being 61,531. The schedules figured on these railroads are figured on two bases; first, per mile of line on the basis of mileage only; and, second, per mile of line on the basis of per mileage operated. On the basis of per mile per line—on the basis of mileage operated, less trackage rates, the Reading has $87,168 of stocks and bonds

outstand' on every mile of line; Lehigh, $65,499; Delaware, Lackawanna & Western, $24,971; Central Railroad of New Jersey, $119,223; Susquehanna, $260,081; Erie, $189,415; Ontario & Western, $176,679; Delaware & Hudson, not given; Pennsylvania, $84,852; and the Baltimore & Ohio, $112,401.

496 Commissioner PROUTY. How is that competent evidence?

Mr. SHEARN. That is the amount of capital stock outstanding and funded debt per mile of line on the basis of mileage operated, less trackage rates.

Mr. BROWNELL. What is it taken from?

Mr. SHEARN. From the reports of the road to the Commission.

The CHAIRMAN. Do you put in against that the stocks and bonds on the lines operated?

Mr. SHEARN. This includes the stocks and bonds on the lines operated.

The CHAIRMAN. Who made up that report?

Mr. SHEARN. That is made up from your annual volume called the Statistics of Railways.

Mr. BROWNELL. Who made it up from that?

Mr. CARR. Is it an extract from that statistical report?

Mr. SHEARN. It is; yes.

Mr. MOOT. It is verified as a compilation; that is what it is certified to be.

Mr. BROWNELL. I suggest that the same disposition be made of that as of the others of that class.

497 Mr. SHEARN. It has been marked for identification.

Mr. BROWNELL. Then we may have an opportunity of examining it.

The CHAIRMAN. The Delaware, Lackawanna & Western is capitalized for only $24,000 a mile.

Mr. ROSS. It is incorrect as to our company. I know that.

Mr. BROWNELL. As to several of them it is incorrect.

Mr. SHEARN. The Pennsylvania is capitalized on the basis of mileage, $363,906 per mile, capitalized and bonded, but it is well known that most of their system is operated over lines not owned, but controlled, which accounts for the difference. The statement that I offer, Schedule W, shows the total amount of capital stock issued and outstanding for each railroad mentioned in Schedule A as of June 30th, 1902, differentiating the common from the preferred, and showing the total cash realized by each of the railroad companies from the issue of capital stock as reported by them, showing the total amount of mortgage bonds and miscellaneous obligations and income bonds on each of the railroads

498 mentioned, and showing the cash realized on amount of mortgage bonds, miscellaneous obligations, and income bonds on each of said railroads mentioned in Schedule A up to June 30th, 1902; and, lastly, the amount of funded debt outstanding for each of the said railroads mentioned in Schedule A as of June 30th, 1902.

Mr. CAMPBELL. Just for a test as to the value of that, I will inquire, for my present information, exactly what that shows in respect to these various items mentioned in regard to the Philadelphia & Reading Railway?

Mr. SHEARN. It shows the total capital stock twenty million dollars. Total cash realized by the sale of stock, twenty million dollars.

Mr. CAMPBELL. That is correct.

Mr. SHEARN. The mortgage bonds, $67,683,952.

Mr. CAMPBELL. That we will have to verify.

Mr. SHEARN. Now, for the Lehigh, the total capital stock is $4,441,100, made up respectively of 106,300 of preferred and the balance common, and their mortgage indebtedness is 41,900,000. The Delaware, Lackawanna & Western stock is 26,200,000; its mortgage bonds are 3,067,000, which would tally very closely with the last schedule.

499 Mr. ROSS. The Delaware, Lackawanna & Western operates thousands of miles, made up of fifteen or sixteen companies. He has not considered those companies. He does not consider the stocks and bonds of those companies in that compilation.

Mr. SHEARN. Well, in this Schedule W I am reading from, this is simply giving the stocks and bonds of the railway companies I am mentioning, not of the subsidiary companies at all.

Mr. BROWNELL. Then what does it prove.

Mr. SHEARN. I want to have these facts before the court of what the amount of these stocks and bonds is outstanding at the time mentioned.

Mr. CARR. Read what there is about the Delaware & Hudson there.

Mr. SHEARN. The Delaware & Hudson: Total capital stock, $34,507,100; mortgage bonds, $5,000,000; miscellaneous obligations of the Delaware & Hudson——

Mr. CARR. That would have to be verified.

Mr. SHEARN. Total amount of funded debt outstanding as of June 30th, 1902, $8,350,000.

Mr. CARR. That we would have to verify. What mileage is that based on?

500 Mr. SHEARN. There is no mileage mentioned in that schedule.

Mr. MOOT. I take it, in view of the admissions here, that this is not competent evidence. It is not competent because it being admitted that the stocks and bonds of the subsidiary companies whose lines are operated, do not appear one way or the other. It must appear clearly by that admission that the amount of outgo from these railroads can not be got from this statement, and this statement can have no value on any theory except getting at the operating expenses of the road; it is simply another method of getting at this for the purpose of fixing the rate they should charge on a commodity, and it is far-fetched at best, but when you get so far away that you have a statement that don't include any part of the indebtedness on which this Commission is asked to base some kind of a finding, of course bearing on the rate charged, it seems to me we are so far away that nobody would want to make use of this as evidence on which to base a decision.

The CHAIRMAN. Those particular figures clearly have no materiality. They are taken, however, and so the paper purports, from the annual reports of this road to the Commission.

501 Mr. MOOT. If your honor please, they may take a great many figures from the annual reports. The point I am making is that they have conceded they have only taken part of them, so that they suggest a falsehood instead of telling the truth; then, that they become incompetent, because you can not take a part of the document and come in here and offer it and say it is competent evidence as bearing on the whole fact. That is my point.

The CHAIRMAN. Now, as I understand, Mr. Shearn, the paper shows two things—the stocks and bonds per mile of line owned and the stocks and bonds per mile of line operated.

Mr. SHEARN. Yes.

The CHAIRMAN. Now, if the latter statement includes the underlying obligations of the leased roads, why, it would appear to be a correct and competent statement.

Mr. MOOT. I am making my objection because they admitted that it did not.

Mr. SHEARN. I would say with reference to that, I have only asked to have it marked for identification because at this moment I can
502 not assure the Commission whether the figures for mileage operated less trackage rates do include the stocks and bonds of the underlying roads. I believe they do.

Mr. CARR. As to the Delaware & Hudson, they do not.

Mr. ROSS. As to the Delaware, Lackawanna & Western, they do not.

The CHAIRMAN. Well, that disposes of it for the present. Mark it for identification.

Mr. SHEARN. Yes; but so far as the schedule of stocks and funded debt per mile of line are concerned it is concededly correct.

Mr. BROWNELL. No; we simply do not know.

The CHAIRMAN. Well, let the paper be marked for identification.

Mr. SHEARN. Well, for that reason I put in this Schedule W, which shows the total capital stock and the total bonded indebtedness of all these companies.

503 Mr. BROWNELL. Let that take the same course and be marked for identification until it is examined.

Mr. SHEARN. There is no need for it to be marked for identification. It is compiled from your record stating the capital stock and bonded indebtedness of these companies of a given date. Your Commission knows that the annual statistics issued every year show that, and all the items that I have been asked by counsel about and that I have read to them are said to be correct.

Mr. MOOT. This is said to be a compilation only, your honor. We ought not to be asked on the spur of the moment to agree to this. Let it be marked for identification and be examined and then we won't get a lot of errors into the record.

The CHAIRMAN. That appears to be the proper course to take.

Mr. SHEARN. If that is urged, I am willing to let it take that course.

(Paper referred to marked "Exhibit No. 23" for identification.)

504 Mr. SHEARN. I called on the Lehigh Valley Coal Company to produce all contracts for the purchase or transportation of anthracite coal entered into between January 1st, 1901, and the present date, subpœnaes having been duly served therefor.

Mr. GOWEN. For what purpose do you want them?

Mr. SHEARN. To offer them in evidence.

Mr. GOWEN. For what purpose?

Mr. SHEARN. I have no objection to stating if it is important to know. The materiality and relevancy of these purchase contracts is threefold. These contracts are contracts entered into between the various coal companies, whose capital stock is owned by the railway companies, and the

supposed independent operators throughout the different coal regions, and while on a first reading or inspection they would seem to be contracts for the purchase of coal, in reality, when they are analyzed, it is seen that they are contracts fixing the rate of transportation of coal. But whether they are for the purchase or for the fixing of the rate it makes no difference, because they are equally relevant and equally important for the three purposes which I am going to mention.

505 In the first place, it has been held over and over again that it is of vital importance in determining the question of the reasonableness or unreasonableness of a rate to know what the carrying companies are really getting for the carriage of such freight. In other words, there is no better criterion to start with than what they are actually getting for the traffic that is under consideration. If they are getting $1.25 a ton for carrying anthracite coal when their published tariffs call for $1.75 a ton or $1.55 a ton, the importance of evidence showing that they are really getting $1.25, when you are asked to modify a schedule fixing the rate at $1.75 or $1.55, it is obvious. If they are carrying coal for $1.25 a ton, it does not lie in their mouths to say when these contracts are offered that that is not a profitable rate if that is what they have been doing year in and year out. They are not in a position to say that they are carrying this coal at a loss or that this is not a profitable rate. It would be assumed, to start with, that what they are content to receive for a large class of their traffic is a profitable rate; and that of course makes the evidence of what they do get very vital, material, and

506 important in establishing what is a reasonable rate.

Now, these contracts when examined will be seen to provide that the bar—that is, the coal company owned by the railway company—these contracts show that the seller—that is, the mine owner—agrees for all future time to deliver to the railroad company, or the railroad company's mine company, which is called the bar, the entire product of the mine. They provide, further, that the compensation for this product shall be as follows: That on prepared sizes the seller shall receive sixty-five per cent of the purchase price of this coal at tide water. The contracts further provide that the bar is not required to take any specific amount in any one year, but only a just amount measured by the colliery capacity of the respective collieries. In other words, if the companies make up their mind in any one year that they will reduce the output forty or fifty per cent, by the provisions of these contracts the output of the mine goes down in that fixed proportion. The contracts say on their face that the owner of the mine has absolutely no say in the fixing of the price at tide water; that he has no say whatsoever as to how much coal

507 shall come out of his mine; that the entire operation of his mine is determined by the number of cars that the railroad company chooses to send to his mine.

Now, then, when you analyze that contract you see that in reality it is nothing more than an arrangement whereby the railroad company agrees not to charge this mine owner more than thirty-five per cent of the tide-water price for carrying his coal, because they agree to give up to him sixty-five per cent of the entire tide-water price. It has happened again and again that coal has been sold at tide water at $4.00 a ton, and, as I mentioned in my opening, under one of these contracts when coal is

sold at tide water at $4.00 a ton, that means that the railroad company or the subsidiary coal mining company is forced to give back to the mine owner $2.60, leaving only $1.40 for the transportation of his coal, and that on its face shows that there is a wide diversion between the published tariff rate and the rate charged to these various independent mine owners. It also shows, not only that $1.40 in that instance would be a reasonable rate, a profitable rate, a maximum profitable rate for the railroad company, but it shows a discrimination against each and every mine
508 owner who will not make one of these contracts, for if any reliance at all is to be placed upon the published tariff charges, when the independent owner brings his coal to the railroad company and asks to have it transported he is charged and must be charged, it must be assumed that he is charged the published tariff rate, where that is $1.75 and where they are transporting this coal for men who will give up the control of their mine to them for $1.40. The discrimination is perfectly obvious, and the discrimination in that case is 35 cents on a ton.

Now, then, these contracts are extremely relevant, both as showing what is reasonable rate and as showing discrimination. When coal is $4.00 a ton and sold under the contract, there is, as I say, $1.40 left, at the outside, to cover these railroad charges. But this coal has to be sold. The coal company or the railroad company has to sell the coal, and it costs money to sell the coal, and it costs between 10 and 20 cents a ton. Assuming it is even ten cents to sell the coal, that means that the coal company that purchases the coal from the miner has had to give up out of the $4.00 for which it sells $2.60 to the mine owner and 10
509 cents more for selling the coal—in all $2.70—and then there is only $1.30 left to pay the freight charges. Now then, if the railroad company is treating its own coal company just as it is treating the independent, these alleged independents who make these contracts on every ton of coal this company purchases and ships to tide water, it is losing money, because if the railroad company charges its own coal company the same thirty-five per cent rate, lo*w* and behold the coal company on purchased coal not only has to pay that thirty-five per cent rate, but it has to pay the cost of selling in addition. So it is losing money on that transaction, and it is losing more money on that transaction when you consider that there is an expense for loading the coal from cars into barges, and when you consider also that these contracts provide for the payment of 65 per cent fixed upon weight at the breaker. The price realized at tide water is based upon what the coal weigh*e*rs when it gets to tide water, and, as everybody knows, there is more or less waste between the breaker and tide water, and there is another element of deduction. So when coal is $4.00 at tide water there is less than $1.30 left for the payment to the railroad company for freight, and that
510 would show on its face a discrimination of 45 cents a ton as against their published charges.

Now, it is also relevant on the question of monop'ly, and extremely relevant on that issue, and it is important.

Mr. CAMPBELL. I would like to raise a point right here, and let the gentleman have his say afterwards. So far as my company is concerned, even if he proves what he says, I object to it as having no bearing against us in the case pending so far as the Philadelphia & Reading is

concerned. If the Lehigh Valley or anybody else does the things that he describes, it cannot be considered by this Commission as evidence against us, because no such facts exist. As to the introduction of these coal contracts as tending to sustain that there is a monop'ly or something existing tending towards monop'ly, I object to their being received here for that purpose. That bears upon a question which is referred to another department of the Government under the laws of Congress. It is not competent as to any question we are not inquiring into.

Mr. KERR. I make the same objection so far as the Delaware &
511 Hudson Company is concerned, because there is nothing of the kind so far as that company is concerned. It cannot be competent against that company.

Mr. SHEARN. I can tell you how it can be competent against that company. If it should develop that that company was selling coal to the Erie it would be relevant and important to know whether the Delaware & Hudson was giving a concession to the Erie Railroad. It is not only relevant on these two issues of the unreasonableness of rates and conclusive on the subject of discrimination, but it had a most important effect and bearing upon the question of monop'ly.

Mr. KERR. This inquiry is not as to the effect upon the seller, and assuming the statement to be true, it cannot be inquired into here.

Mr. SHEARN. I think these contracts have a great effect upon the public. In other words, if we find the railroad situation—take the Lehigh Valley, which is favorably situated with reference to the great centres of population, such as this city for instance—if we find it is charging for bringing its coal a distance of 145 miles the same rate that
512 the Erie or the Reading is charging for bringing the coal 230 or 240 miles, why the thing that is going to result from your finding here is this—the determination of whether the public is entitled to its advantageous situation with relation to these mines or whether that advantage belongs wholly to the railroad company. It is a fact that these mines of the Lehigh Valley, for instance, are situated near the great distributing centre. Is that a fact to be taken advantage of and enjoyed by the Lehigh Valley, or is the public to have the benefit of its proximity to that coal? So the determination of this case is of vital importance not only to these mine owners, and not only because it will stir up competition among them, and not only important to these carriers because it will determine whether they have a right to charge what we claim is an excessive price for coal, but also that railroad companies like the Lehigh Valley may not be permitted to enjoy the entire advantage of proximity to the mines which this railroad reaches—the proximity of those mines to a great distributing point like New York City. It may have some of it, of course. I admit that where there is a much shorter haul and
513 you have to put the terminal charges on that short haul, it is perfectly natural that there should be a difference in the rate—a somewhat higher charge for the shorter haul than for the longer haul, but they are not entitled to make any greater charge than to make up that difference of adding the terminal expenses to the short haul. In other words, they cannot obtain the entire fruits and advantages of the proximity of these mines to a great distributing point like New York City. It is perfectly clear to anyone who thinks of it for a moment that

there can be but one reason for making one common charge for such varying differences as made by these different railroads, and that is so they will bring that product at the same price and be no competition in the sale of the coal. That is digressing somewhat.

Com'r PROUTY. Does your petition allege that these carriers divide the traffic in violation of the fifth section of the act?

Mr. SHEARNS. Yes, sir; it does.

Mr. KERR. No, sir; it does not. There is no allegation in
514 the petition as to that existing at the time the complaint was filed.

Mr. SHEARNS. Paragraph ten of the petition states "that by means of maintaining said common freight rates, and dividing the tonnage of anthracite coal to be transported over the lines of said defendants in substantially the said proportions, the aggregate or net proceeds of the earnings of the said defendants from the transportation of anthracite coal have been pooled and divided among said defendants in substantially the said percentages and proportions in violation of section 5 of said act to regulate commerce."

Mr. KERR. The Delaware & Hudson Company and the New York, Ontario & Western are not charged with maintaining that arrangement at all.

Mr. SHEARNS. That is correct. The importance of your having these contracts before you with reference to the question of pooling, which is the same thing as the question of monop'ly and the question of combination, and no one can conceive of any reason why these coal companies, owned by the railroad companies or the railway companies, they being the same thing as the coal companies, are willing to
515 stand a loss on the purchase of the independent coal unless the reason is that by means of these contracts they control the output of those mines, and they control the price at which that coal shall be sold. That is the rational explanation of it, of course. What reason can you conceive of why, when coal is $4.00 a ton, the Lehigh Valley Coal Company should be willing to sustain a loss of anywhere from ten to twenty-five cents a ton on every ton purchased of these other coal companies? The reason is to be found in these contracts and found in the condition of the business, because the contracts provide that the buyer shall be required to take not any specific amount, not the entire product, but only such quantities as shall be "a just proportion" of the entire quantity of coal agreed to be purchased by the buyer measured by the colliery capacity of the respective sellers.

Mr. CAMPBELL. What are you reading from?

Mr. SHEARN. I am reading from one of these contracts furnished by the general manager of the New York, Ontario & Western, Mr. Childs, to the Industrial Commission, appearing in volume 9 of their report. They are by these contracts given absolute control of the output
516 of that mine. The mine owner no longer has any say as to how much of the commodity shall be mined, or how much he shall get out, because the third clause of the contracts provide that the general average of the prices shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the buyer shall furnish not later than the 8th of each month a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the

buyer at tide. That is what fixes the price in the last analysis if there is a dispute between them. The entire product of the mine is taken over under these contracts. Railroads like the D., L. & W. and the New York, Susquehanna & Western that own their mines, it is turned over to the railroad direct.

Now I say that a further point of importance in connection with this is as follows: That these contracts are, when analyzed, contracts for transportation and not for purchase of coal, and we will follow this up by such proof as this: you recollect near the end of the strike when coal was selling here in New York at $15.00, $20.00, and $25.00 a ton, when there was an outcry about it, and when the railroads said they were doing everything in their power to prevent it, saying that they were
517 selling their own coal for $5.00 a ton, what will you say about contracts like this one, that show you that one of these railroad companies was buying coal of one of these miners on the basis of one of these contracts at $5.00 a ton, and selling it back to him when it got down here to tide water at 65 per cent of that price, and then allowing that man to turn around here and sell it at $21.00 a ton? Don't that point to whether these contracts were for the purchase of coal or for the control of transportation? It is of vital importance in this case that we should have these contracts before you. There can be no valid reason advanced against them which can be sustained, unless you make up your minds to shut your eyes to proof as to what the real conditions of this business are. Unless you make up your mind that you will not, as the law imposes upon you your duty to do, investigate the manner in which these companies conduct their business, you must receive these contracts. You must not leave it for speculation or leave it to their own employes to say generally that there is a certain class of contracts but they do not know with whom they are, or to what extent they go. This Commission ought to know how many such contracts there are, whether it is
518 a fact that the entire independent coal output through these regions, is carried pursuant to these contracts; and I tell you in addition to that, the evidence will disclose the fact that instead of charging other people in some instances the published tariff rate we find them making a charge on the basis of 35 per cent, showing a general agreement as to rates throughout all these regions among all these railroad companies.

To recapitulate, this shows, first, that the rate is unreasonable, because it establishes what these railroads are actually content to receive for a large part of this traffic. Second, it shows discrimination clearly; it is a mere matter of addition and subtraction.

Mr. CAMPBELL. If it is uniform nobody is discriminated against, either individuals or localities.

Mr. SHEARN. Certainly the people are discriminated against. What is the position of independent men who do not enter into one of these contracts? Such a man can not compel one of these railroads to take his coal to tide water at anything less than the published tariff. The published tariff, if it has not been attacked in the courts or before your Commission and declared to be unreasonable, would be supposed to be
519 a reasonable charge when a would-be shipper steps up with coal to ship. Put yourself in the position of the independent coal man——

Mr. CAMPBELL. If the independent producers were complaining or had any complaint, the doors are open here and they would have been heard years ago if there had been any semblance of truth in these charges or ground for complaint. When the independents charge what you claim it will be sufficient time to consider it. The complaint comes only from the millionaires of the city of New York who own the property surrounding Central Park and these magnificent structures down here. Nobody else complains that there is legitimate ground for complaint about these things.

Mr. SHEARN. Everybody is complaining.

Mr. CAMPBELL. These millionaires, these owners of the tenement houses and magnificent buildings down here, are not going to reduce your rent if you reduce the price of coal. There are no other complaints except those based upon the hysterical demands of your newspaper.

520 Mr. SHEARN. I thought we would sooner or later come around to the "hysterical demands of the newspapers." I have no doubt you recollect what these same operators said about President Roosevelt when he said he would try to prevent an appalling public calamity and brought into being the Anthracite Coal Strike Commission, which settled the strike and relieved the people. We remember what they said about President Roosevelt and Mr. Knox in the Northern Securities case, what Mr. Hill and Mr. Morgan are saying about President Roosevelt and Mr. Knox, and we can rest under this criticism. I do not think it will have much weight with this Commission.

Mr. CAMPBELL. We will show you before we get through in regard to this proposition that you people here in the city of New York have been taking the bowels out of this great Commonwealth of Pennsylvania for 25 years; for a quarter of a century you have been getting your coal for cost, and that you whine like a pack of whipped dogs whenever a fair and decent price is asked in this community. It happens that you are located where the surplus is distributed, and you have been paying less for your coal than I do, and I am a great deal nearer to the mines. You are not entitled to the concessions you demand. You do not pay enough, and I am going to ask this Commission to advise that the rates on coal to New York should be advanced.

521 Mr. SHEARN. I think the people of the city of New York will appreciate the compliment paid to them by the attorney of the man who claimed to be the divinely ordained agent of God in the coal regions when he calls them whipped dogs, and I think Boston, Baltimore, and Albany, and other cities which have been in such a distressful condition as the result of the machinations of these people will appreciate it—conditions so distressful that at public meetings have been held, gotten up by the best citizens, an outcry of distress has arisen from all parts of the United States as the result of the robbery practiced by this gentleman's client.

The CHAIRMAN. Mr. Shearn, it seems that the discussion has taken a very wide range.

Mr. SHEARN. This element we are discussing has been injected into it by counsel on the other side. I was simply directing my argument to the materiality of this evidence.

The CHAIRMAN. If I understand you, you ask that the Lehigh Valley Coal Co. produce certain contracts.

Mr. SHEARN. Yes, sir; and I have outlined the materiality of that evidence, and I say, in conclusion, that it is important from all
522 three points—equally important from all three points of view, and must be received unless you shut your eyes to the actual state of affairs existing.

Mr. GOWEN. If the Commission please, call has been made upon the Lehigh Valley Railroad Co., which I presume is intended to correspond to the call embraced in the subpœnas issued, and of the following character: A subpœna issued to David G. Baird, secretary Lehigh Valley Railroad Company, requiring him to produce all contracts for the purchase or transportation of anthracite coal entered into at any time since the first day of January, 1901, between the Lehigh Valley Railroad Company and any and all producers of anthracite coal, or owners or operators of anthracite coal mines.

To that call we replied that there are no such contracts in existence, and I take it Mr. Shearn admits that.

A subpœna was also served upon David G. Baird, secretary of the Lehigh Valley Coal Company, to appear here and bring with him all contracts for the purchase or transportation of anthracite coal entered into at any time since the first day of January, 1901, between the Lehigh Valley Coal Company and any and all producers of anthracite coal,
523 or owners or operators of anthracite coal mines. To that call we answered that there were no contracts in existence of that kind, which have been entered into since the first day of January, 1901, between the Lehigh Valley Coal Company, for the purchase or transportation of anthracite coal, with the producers or operators of anthracite coal mines, relating to or covering the transportation of anthracite coal. Now, if the Commission please, I take it we will all agree, and I believe Mr. Shearn will probably agree, that we are here to try a case involving matters only as to which this Commission has jurisdiction to deal with, and we are not here to furnish the gentlemen with information for the public as to matters in regard to which this Commission has no jurisdiction. Mr. Shearn in his opening very frankly stated the purpose he had in view in adducing evidence before this Commission to establish monopoly and covering the sale of anthracite coal, and that purpose was that this Commission should, from the testimony adduced before it, make report as to the fact which that testimony in its judgment established, so that some other body or some other department of the Government
524 might take steps to correct what Mr. Shearn thinks is incorrect and unjust to the producers and consumers of anthracite coal.

Now, without using the word in an invidious sense, but in a legal sense, we think it is impertinent that this body, constituted for the purpose of investigating certain matters, should come to New York to have facts presented to it not bearing upon any matter before it, or upon any matter as to which it has jurisdiction, that it may return to Washington and lay those facts before another department of the Government which Mr. Shearn thinks should be moved to take action wholly outside of the matter as to which this Commission has jurisdiction.

The complaint before the Commission is that the rates which are in force on anthracite coal are unreasonable per se; that they are unreason-

able by comparison with rates existing on what is supposed to be a similar commodity, to wit: bituminous coal, and that the carriers which carry a large part of the anthracite coal have combined in violation of the act of Congress. How can it possibly tend to enlighten this Commission as to any one of those points to have testimony produced before it to show what any producer or shipper of anthracite coal is paid for his coal, either as a purchaser for someone else or as a miner of it
525 himself? What possible bearing has that fact upon the question of the reasonableness of the anthracite coal rates?

Now, bear in mind, if the Commission please, that we are not confronted with a question that we are charging a certain percentage of the tide price on anthracite coal. That existed for a short time, but was discontinued. The railroad companies are carrying at fixed rates and the rates have been shown to you. The question is whether those rates are reasonable. Suppose, as Mr. Shearn says, that these contracts which have been entered into by the Lehigh Valley and which require it to pay a certain amount to the producer, don't leave it enough to pay the rate. Now where is the proof of that? If he can prove that, if he can prove that the Lehigh Valley Coal Company is not paying the tariff rate, then there is a question before this Commission not only of discrimination in favor of the Lehigh Valley Coal Co., but a further question of whether it is accepting less from the Lehigh Valley Coal Company, whether that fact is not evidence that the lower rate is a reasonable one. But there is no proof, and there can be no proof produced before this Commission to show that the Lehigh Valley Coal Company is not paying on all
526 coal shipped, whether mined by it or purchased, the tariff rate in force.

Now, I do not want to detain the Commission, because this seems to be a plain proposition, but very much the same question has been before this Commission in another case, in the old case of Coxe Brothers & Co., which, I believe, the chairman alone of the present members heard.

The CHAIRMAN. That antedates my connection with the Commission.

Mr. GOWEN. I thought you heard that case. The whole question of the relation between the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company was gone into in that case, and argument was presented in the case that because it appeared that the Lehigh Valley Coal Company had entered into a certain contract in New York to supply the elevated railroads here at a very low price, it was argued to the Commission that that price was so low that the coal company could not pay the cost of mining the coal and also pay the freight rate, and that, therefore, it must be assumed that it did not pay the freight rate, and that there was a discrimination in favor of the coal company. Now, this Commission dealing with that point says this:

527 "The legal right of the Lehigh Valley Railroad Company to take and hold the capital stock of the Lehigh Valley Coal Company, and the right of said company to mine, buy, ship, and sell coal is not raised in this proceeding, and if such right were raised and challenged this Commission has no authority to determine it. While the coal company may, in the exercise of its chartered rights, buy and sell coal, certainly this Commission can not determine the prices at which it may buy and sell, so that the railroad company may realize its established freight rates as carriers and suffer no loss as stockholder. The Commission

would be incapable of any such determination if it had any authority to make it."

528 That is simply the proposition yet. The plaintiffs here want to show—that is their allegation—they want to show that the Lehigh Valley Coal Company is paying for certain coal a price which does not enable it to pay the freight rate without loss to itself. What possible connection that has with the question before the Commission I am at a loss to know.

Com'r PROUTY. It is stated by Mr. Shearn that the Lehigh Valley Coal Company is a creature of the Lehigh Valley Railroad Company. Do you admit that to be so?

Mr. GOWEN. The Lehigh Valley Railroad Company owns all the stock of the Lehigh Valley Coal Company, under the statutes of Pennsylvania.

Com'r PROUTY. You may remember, or you may have not seen a case in which this matter indirectly came before the Commission subsequent to the Coxe case. The Iowa Developing Company was a company engaged in the transportation of grain. The entire capital stock of the company was owned by the Chicago Great Western Railway Co. The Iowa Development Company bought grain in Kansas City and sold it in Chicago, and paid the Chicago Great Western Co. the tariff rate

529 and lost money in the transaction of course. We held that was a device by which the rate was departed from, inasmuch as the Chicago Great Western Company owned the entire stock of the Iowa Development Company, and operated and organized it for that purpose.

Mr. GOWEN. Do you say you would hold the statutes of Pennsylvania in this case which authorized the Lehigh Valley Railroad Company to hold the stock of the Lehigh Valley Coal Company as being a device?

Com'r PROUTY. The Iowa Development Company was legal, but we held that when the railroad company organized the company and operated it for that purpose that it was a device to evade the law.

Mr. GOWEN. How long had that organization existed?

Com'r PROUTY. I do not know; about three or four years.

Mr. GOWEN. The Lehigh Valley Coal Company has been in existence for forty years. It could hardly be a question as to its being a device here.

Com'r PROUTY. One of the questions involved in this suit is the reasonableness of this rate?

Mr. GOWEN. Yes, sir.

530 Com'r PROUTY. There are a great many ways in which to determine a reasonable rate, but one way is to enquire what rate has been in effect for a long series of years. You find a rate has been in effect for a long time and you might accept that as showing that that is the proper rate. May not this show that that rate, while that has been in effect all this time, has never been a competitive rate; that you have so controlled the situation that the rate itself has never been opened to competition between these roads, and does that not have a bearing on the question of the reasonableness itself?

Mr. GOWEN. I can not quite see what bearing the question of the ownership of the coal has upon the reasonableness of the rate. The proposition here was to prove that the Lehigh Valley Coal Company owned by purchase or ownership every ton of coal shipped. What has that to do with the reasonableness of the rate?

Com'r PROUTY. Suppose these independent operators instead of selling to this company had gone into the market and tried to secure a
531 rate for the transportation of that coal. In that way they would have undertaken to secure avenues for their coal, and so there would have been competition, but in point of fact your company has bought up this independent coal and there has been no competition. The companies agreed among themselves in what proportion it shall be divided, and that has eliminated all competition from this question, and there is no competition.

Mr. GOWEN. If your Commission is going to assume that——

Com'r PROUTY. We are not going to assume anything. Mr. Shearn claims that and wants to show that.

Mr. GOWEN. His call is for contracts between the Lehigh Valley Coal Company and——

Mr. PROUTY. He stated that he expected to show the same thing as to other companies in regard to this independent coal.

Mr. GOWEN. I do not care to take up further time, but I must decline to produce the contract. I take it the Commission will exclude it.

532 Mr. SHEARN. I ask the Commision to direct the counsel to produce the contracts called for.

The CHAIRMAN. As to certain contracts described in this subpœna, counsel replied that there are no such contracts.

Mr. SHEARN. I ask the court to direct counsel to produce the contracts between the Lehigh Valley Coal Company and the owners of anthracite coal mines, entered into between January 1st, 1901, covering the purchase or transportation of anthracite coal.

Mr. FIFER. On whom was the subpœna served—on counsel?

Mr. SHEARN. No, sir; on the president and secretary. You can see the subpœnas were properly served.

Mr. GOWEN. Yes, sir.

Mr. SHEARN. They were served on the president and secretary of the railroad company and on the president and secretary of the coal company.

Mr. GOWEN. My agreement yesterday with Mr. Shearn was that Mr. Baird, on whom the subpœna was served, should not attend, but that Mr. Shearn should not lose anything.

533 The CHAIRMAN. I understand counsel to say that there was no such contract as described.

Mr. SHEARN. He does not say that there are none for the purpose of coal, but declines to produce them. I ask that they be produced.

The CHAIRMAN. You make a distinction, therefore, between contracts for the purchase of coal and the sale of coal?

Mr. SHEARN. I accept for the present counsel's statement that there are no contracts for the transportation of the anthracite coal entered into by the Lehigh Valley Railroad Company since January 1, 1901, but there are contracts for the purchase of anthracite coal entered into by the Lehigh Valley since January 1st, 1901. There are between the Lehigh Valley Coal Company and the owners of the mines for the purchase of coal since January 1st, 1901, and properly described in the subpœna, and I ask the court to make an order directing that they be produced.

The CHAIRMAN. You claim that those contracts provide for the payment of a certain percentage of the price at tide water?

534 Mr. SHEARN. Yes, sir. I would like—if you wish to consider that—to hand up to you the copy of one of these contracts.

Mr. KERR. Let us confer a moment in regard to it. I think we will be willing to submit one of the contracts to the Commission, not as evidence, but for them to see the terms of the contract, in order that we may discuss the question involved in this matter here.

Com'r PROUTY. Are the contracts substantially the same?

Mr. KERR. They are substantially the same, not in all details, but in their general provisions. We will have no objections, I think, to the Commission having one of them to examine.

The CHAIRMAN. Can you hand up one now?

Mr. KERR. Yes; I think so. I think in general they are substantially the same, but in some details they are different, of course. We contend that they are all contracts for bargain and sale, under which the title to the property passes at the breakers in the State of Penn-
535 sylvania, and so it is not in the province of the Commission or any tribunal—unless the seller, as well as the buyer, is a party to it—to enter into consideration of the validity of that contract. It must be deemed a valid contract for bargain and sale of coal at the breaker in Pennsylvania.

Com'r PROUTY. The Elkins bill now provides that we can make them parties.

Mr. KERR. They are not parties, and certainly at this stage that matter can not be enquired into.

The CHAIRMAN. We will take this matter under consideration and take a recess now until 2 o'clock.

At 1 o'clock p. m. the Commission took a recess.

536 AFTER RECESS.

2.00 o'clock p. m.

The CHAIRMAN. During the recess the Commission has briefly examined the blank contract which was submitted to our inspection by the courtesy of counsel. We understand from counsel that all the stock of the Lehigh Valley Coal Company, which is denominated the buyer in this contract, is owned by the Lehigh Valley Railroad Company, and it appears from an inspection of the contract that the prices paid to the seller are certain percentages of the prices for which the coal is sold at tide-water terminals. If the balance retained is less than the amount paid the railroad company, the coal company sustains a loss in the transaction, which is hardly to be assumed. However this may be, the facts alleged to be contained in these contracts may properly be shown, we think, and we also think that the contracts are competent evidence of the fact. We therefore overrule the objection and allow the contracts to be put in evidence.

537 Mr. GOWEN. If the Commission please, it seems to me that the making of the railroad company and the coal company one and the same for the purpose of this hearing and investigation is very important. I was about to say that it will open up such an enormous field of inquiry which, in my judgment, is totally irrelevant, that I am constrained to say, referring to questions which should be determined

by the courts, that I am sure that that way of reaching a decision in the matter will ultimately facilitate the official decision of this Commission.

538 Mr. SHEARN. I requested that the contract which has been submitted to you by Mr. Gowen be marked for identification, so that it can be made part of the papers in the application to the court for punishment for contempt.

Mr. GOWEN. The contract was handed to the Commission for its inspection. Of course, we will expect them to return it.

Mr. SHEARN. Do you object to having the court retain the contract?

Mr. GOWEN. Yes; I do.

Mr. SHEARN. Well, inasmuch as the rules of practice of the Commission and the act itself, as I interpret it, give the Commission power to call for the production of any paper that may be of assistance to the court in arriving at a conclusion germane to the issues, it seems to me that the court should require the production of this paper, and should insist upon the retention of this paper by the Commission, so that it can be made a basis for proceedings in court.

539 Com'r FIFER. Could you not use the one in the one of the Industrial Commission?

Mr. SHEARN. Yes; but that is a roundabout way of getting at it.

The CHAIRMAN. This blank contract is in the possession of the Commission as a matter of courtesy, so that they may inspect it with a view to determining what sort of ruling they shall make. We are constrained to hold that these contracts are competent evidence, and that the representative of the Lehigh Valley Railroad Company should be required to produce them.

Mr. SHEARN. The point of my suggestion is this: Inorder to accommodate counsel I have excused from attendance the secretary of the company, in whose custody this contract is, as well as the other contracts. Now then, if the witnesses were on the stand, I should ask them if there were any such contracts, and if so, to produce them. Then they would, in the ordinary course of events, be marked for identification, so that it would be perfectly clear to the court in the future what the paper was that was required to be produced, and the mere fact that the witness is not on the stand, but that Mr. Gowen is speaking for him, of course would make no difference.

540 Com'r FIFER. Suppose the witness were on the stand, and were asked to produce the paper or contract and declined to do so, what then? The Commission has no power to punish him.

Mr. SHEARN. I understand you have not the power to punish him for contempt, but you have power to made a record on which punishment for contempt may be had.

Com'r FIFER. Suppose you treat it as though the witness was here and on the stand.

Mr. SHEARN. That is what I am asking to have done. These contracts are here in contemplation of law, but they will not permit them to go out of the custody of the office into the files of this court, but it is perfectly proper and orderly to have the contract marked for identification, so that there can be no doubt in the future as to what this paper is. For instance, it was important for you to know in arriving at a decision what

this contract was, and after an inspection of it you have determined that it is relevant.

Mr. GOWEN. I am willing to stipulate, when this matter is heard by the court, that it will be handed out freely.

541 Mr. SHEARN. What is the objection to having this particular contract marked?

Mr. GOWEN. I would rather not have it go into the record.

Mr. SHEARN. Do you concede that the contract you have handed up is identical with the contract set forth in volume 9 of the Report of the Industrial Commission?

Mr. GOWEN. I have not looked at it.

Mr. SHEARN. Will you take the trouble to look at it?

The CHAIRMAN. We have these papers as a matter of courtesy.

Com'r PROUTY. Let me make a suggestion, Mr. Shearn. The Commission is of opinion that you are entitled to the evidence you say that contract will disclose, and we are also of opinion that the contracts are evidence of those facts; but you could also probably show those facts in another way. You could put on the stand a man familiar with the actual transactions and ask him to state whether the coal of independent companies is handled that way, and to what extent. It is conceivable that that testimony might be admissible as not interfering with the rights of third parties when the contract might not be, and would not be

542 well for you to have a witness here and ask him those questions and let the whole thing go up at once?

Mr. SHEARN. I shall do that. I have witnesses under subpœna who will be able to give such testimony, and who, I think, if not interfered with, will be willing to produce these contracts.

Mr. CARR. I object to such an inference as that, that a witness he has has been interfered with by anybody. I do not propose to sit here and listen to a statement of that kind before this tribunal or any other.

Mr. SHEARN. I shall follow it with a suggestion——

Com'r PROUTY. You are not entitled to go into the private business of third parties, but you are entitled to bring out the fact that the coal of independent companies has been handled that way for some time. It might be that you would be able to show that by oral testimony when you would not have the right to do it by the contract.

Mr. SHEARN. I shall want the secretary of the coal company in court, and I shall want the secretary of each of the other coal companies in court whose presence has been excused, and I shall make the record so complete before the matter is certified up that there can be no

543 question about it. I now call on the Delaware, Lackawanna & Western.

The CHAIRMAN. Let us understand the matter. The Commission holds that the facts which you say are set forth in these contracts are competent to be shown in this proceeding, and that the contracts are competent evidence of those facts. The representatives of the parties to the contracts having them in their custody are asked to produce them and decline, making certain objections. The Commission overruled those objections, and direct the production of the contracts, and the representative of the coal company refuses to comply with that direction.

Mr. SHEARN. But has admitted that he has brought into court and has in his possession such contracts. There is no doubt about that, is

there, Mr. Gowen? I say there is no doubt you have the contracts in your possession.

Mr. GOWEN. I am perfectly willing when the question goes up to have it treated as if Mr. Baird, the secretary of the coal company, had responded to the subpœna and had stated that he had brought with him the contracts called for by the subpœna and had declined by advice of counsel to produce them.

Mr. CARR. You do not mean such contracts as are called for by the subpœna?

544 Mr. SHEARN. Contracts for the purchase of anthracite coal by the Lehigh Valley Coal Company since January, 1901?

Mr. COWEN. Yes.

Mr. SHEARN. I now call upon the Delaware, Lackawanna & Western Railroad Company to produce contracts entered into for the purchase of anthracite coal by that company with third parties between January 1st, 1901, and the present time, as called for by the subpœna.

Mr. ROSS. We have a few such contracts. Our company is not in exactly the same position as the Lehigh Valley. Our company under its charter has the right to own coal mines and to buy and sell coal. The road undoubtedly was built very largely for the purpose of hauling its coal to market, and it was for a great many years known as the coal road. I say we have a few such contracts as referred to by Mr. Shearn with independent operators along our line.

Com'r PROUTY. Those are directly with your company?

Mr. ROSS. Those are directly with our company—the railroad

545 company. These contracts simply provide that we shall buy the coal from them at the mines. Contract is made in Pennsylvania, by a Pennsylvania corporation, with individuals residing in Pennsylvania. The coal is bought at the mines of the operator. I therefore conceive that there can be no question involving interstate commerce in these contracts. Our company having the right to buy coal and to sell coal, we certainly have the right to buy it without reference to interstate commerce or without reference to our dealings as a common carrier, and it seems to me therefore that the contracts in question are totally irrelevant to the inquiry before this Commission. The question here is as to whether or not our rates are reasonable and just, or whether they are unreasonable and unjust. These contracts do not show anything, so far as the question of reasonableness or unreasonableness of the rates is concerned. It is not material to Mr. Hearst as to what we pay for our coal, nor is it pertinent to this inquiry as to what we receive for our coal. The only question is as to whether or not our rates are reasonable. Now, it seems to me it is immaterial to this inquiry as to whether or not we have any contracts with persons residing along our line. This

546 question was thrashed out in the Haddock case, which I referred to the Commission before recess. Probably Mr. Shearn is not familiar with it. There are two or three paragraphs here I want to read.

Mr. SHEARN. I have read it.

Mr. ROSS. There the court practically held that these contracts were between the railroad company and a third party.

Com'r PROUTY. Just what was the question raised?

Mr. Ross. There was an application before the Commission by Mr. Haddock for subpœnaes duces tecum, bringing these contracts into court. We had a contract with Mr. Haddock. He thought the rates we were charging him were unreasonable and unjust.

Com'r PROUTY. The rates of transportation?

Mr. ROSS. Yes, sir. We had a contract with him for the purchase of all his coal.

Com'r PROUTY. Just what relief did Mr. Haddock ask in this case or suit?

Mr. ROSS. He wanted the Commission to hold that the rates were unreasonable and unjust.

547 Com'r PROUTY. That is the same question raised here.

Mr. ROSS. Exactly the same thing. Notwithstanding the existence of this contract, Judge Cooley says:

"By its motion for subpœnaes duces tecum complainant is understood to desire to obtain, as instruments of evidence, among other things, certain contracts for the sale of coal made between respondent and third parties. If such contracts were put in evidence they might show, perhaps, what respondent is receiving for its coal at some of the points of delivery. But that is a fact that is entirely competent to prove by any person in respondent's service who knows the facts, and also by any third party, purchaser or otherwise, who may know the facts. But we do not think complainant is entitled to call for the contracts themselves for this purpose. Third persons have rights in such contracts. They would have a right to object to the contracts being produced if they themselves were present before us at the hearing, but they can certainly lose no rights by reason of being strangers to the proceedings and not
548 present. There may, for aught we know, be matters in their contracts which neither this complainant or any other individual of the public has any concern whatever or any business to inquire into. We do not know that such is the case, but we do know that for the purpose of ascertaining the selling price of coal it is not necessary that the production of the contracts be required, and also, as has been said, that parties interested in them, and who are not here to consent to their being produced, might rightfully object if they were here.

"This seems to us to be all that it is necessary should be said at this time in regard to the motions that have been made. Without passing specifically upon the application for subpœnaes duces tecum we think it advisable that no such subpœnaes should now be issued. Some that have been asked for could not be issued for the reason above assigned. So far also as they seek to obtain an accounting in respect to eastern shipments the subpœnaes should not be granted for the reason that no such accounting could be had here. It must be had, if at all, in the courts."

549 Then it goes off on the question of reasonableness, implying that as to the question of reasonableness they must pursue another method.

Having in mind the ruling of this Commission upon this identical question, the Commission having held that it was not right for our company to produce these contracts, we must decline to produce them here now.

Mr. SHEARN. With reference to the Haddock case, I think you will find on examination of the record that the real reason why subpœnaes did not issue was that the court found that as Mr. Haddock had a contract,

a valid and existing contract, with the Delaware, Lackawanna & Western Railway Company he could not complain of the reasonableness of the rates; he was bound by his contract, and the case went off on that line. You will also recollect further that a part of the controversy was on the interpretation of his own contract, he claiming that they were not properly carrying out the provisions as to the payment to him on culm and buckwheat and those smaller sizes, and that was thought a proper
550 question for interpretation by the courts and not before the Commission.

Mr. Ross. Here is what the court says on that, in respect to the reasonableness of the rates to the North and West:

"In respect to the reasonableness of rates upon shipments to the North and West, we think it advisable that the testimony be taken in the ordinary way, and when the time comes for taking it the respondent will be expected to produce for the purposes of examination any books or papers of its own that may seem to be relevant, and that may properly be called for, but it should not be required to make exhibit of any dealings with third persons, unless their bearing upon the controversy is manifest."

Mr. SHEARN. I accept that, of course. Unless bearing on the controversy the papers would not be required. But their bearing on the controversy is manifest. It is as manifest with the Delaware, Lackawanna & Western as it is with a company that operates by means of a coal company; just as with the Lehigh Valley, what the Delaware, Lackawanna & Western gets for transporting the coal under these contracts is
551 determined by the amount left after the 65 per cent is paid to the third party, and after the other elements we have considered have been discharged. Therefore these contracts would be material just as the others were in showning what they were willing to and were actually during a long period of time accepting—for what? For the transportation of anthracite coal to tide water. So that the relevancy is clear, and is precisely parallel to the relevancy of the other contracts. Of course, I will not reiterate what I said on the previous argument. It all applies to the Delaware, Lackawanna & Western with the same force and effect as to the Lehigh Valley.

The CHAIRMAN. You make no question but what the subpœna has been properly issued?

Mr. Ross. The subpœna has been properly served on the secretary.

The CHAIRMAN. There is some official here who has the contracts?

Mr. Ross. Yes, sir.

The CHAIRMAN. And for the reasons you have named you decline to produce them?

Mr. Ross. Yes, sir.

552 The CHAIRMAN. Then it comes to this: Mr. Ross, counsel for the Delaware, Lackawanna & Western, concedes that the subpœnas were properly served; that the representative of the company has in his possession the contracts called for. He is asked to produce them, and declines to do so for the reasons named by him, which are in the nature of objections to the evidence. The Commission overrules the objection and directs him to produce the contracts, in order that they may be put in evidence, and he declines to do so, notwithstanding the ruling.

Mr. SHEARN. I call upon the Central Railroad Company of New Jersey——

The CHAIRMAN. I suppose, Mr. Ross, in this case no question was raised that the witness subpœnaed is not here?

Mr. ROSS. No, sir; no question is raised on that. We will assume that he is here.

Mr. SHEARN. It is conceded, is it not, that the secretary is the person having custody of these contracts?

Mr. ROSS. Yes, sir.

553 Mr. SHEARN. I call upon the secretary of the Lehigh & Wilkesbarre Coal Company to produce all contracts for the purchase of anthracite coal entered into between that company and third parties since January 1st, 1901.

Mr. CARR. Will you permit me to make a suggestion about it?

Mr. SHEARN. Yes, sir.

Mr. CARR. Is there any reason why all these cases should be gone through with? The two cases presented present all the questions. One presents the question of a contract made with a coal company where the railroad company owns the entire stock of that company, and the other presents the case of a railroad company that is also a mining company, and that operates the mine. Those two cases present the questions that may be raised under a proceeding of this kind. I make the suggestion because it will encumber the record to go through with all of them, and it involves substantially the same question.

Com'r PROUTY. Is there any case where the stock of the coal company is not entirely owned by the railroad company?

Mr. CARR. There may be another case of that kind that it might be proper to present. I do not want to interfere with the proceed-

554 ing at all except by way of avoiding encumbering the record as far as possible.

The CHAIRMAN. That is a question for Mr. Shearn in the first instance.

Mr. SHEARN. I can not consent to be put in the position of having one of these cases or two certified up and then come back and call upon another railroad and allow the same proceeding to be gone over again before we get the contract. Instead of doing that, we shall certify all the cases up at the same time.

Mr. THORNE. Do you refer to the secretary of the railroad company, or the secretary of the Lehigh & Wilkesbarre Coal Company?

Mr. SHEARN. First I call upon him as secretary of the Central Railroad Company of New Jersey.

Mr. THORNE. He is here, and you can put him on the stand.

555 GEORGE O. WATERMAN, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Waterman, are you the secretary of the Central Railroad of New Jersey?

Mr. WATERMAN. I am.

Mr. SHEARN. And have been how long?

Mr. WATERMAN. About two years.

Mr. SHEARN. Does the Central Railroad of New Jersey operate a railroad between the anthracite mining fields in Pennsylvania and Jersey City, New Jersey?

Mr. WATERMAN. It does.

Mr. SHEARN. And has during all the time you know anything about it?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. A large part of its business is the transportation of anthracite coal, is it not?

Mr. WATERMAN. That is a very important part of it.

Mr. SHEARN. Do you know of the existence of a corporation called the Lehigh & Wilkesbarre Coal Company?

556 Mr. WATERMAN. Yes, sir.

Mr. SHEARN. In what State is that incorporated?

Mr. WATERMAN. State of Pennsylvania, I understand.

Mr. SHEARN. What is the business of the Lehigh & Wilkesbarre Coal Company?

Mr. WATERMAN. Principally to mine and sell coal.

Mr. SHEARN. Anthracite coal?

Mr. WATERMAN. Anthracite coal.

Mr. SHEARN. Who is president of the Central Railroad of New Jersey?

Mr. WATERMAN. George F. Baer.

Mr. SHEARN. Who is president of the Lehigh & Wilkesbarre Coal Company?

Mr. WATERMAN. The same gentleman.

Mr. SHEARN. Are you an officer of the Lehigh & Wilkesbarre Coal Company?

Mr. WATERMAN. I am.

Mr. SHEARN. Do you know what the capital stock of that Company is?

Mr. WATERMAN. About $10,000,000.

Mr. SHEARN. The Lehigh & Wilkesbarre Coal Company?

557 Mr. WATERMAN. About $10,000,000.

Mr. SHEARN. Do you know who owns the capital stock of the Company?

Mr. WATERMAN. The Central Railroad of New Jersey owns a large portion.

Mr. SHEARN. Does not it own all of it?

Mr. WATERMAN. No, sir.

Mr. SHEARN. How many shares are owned by those other than the Central Railroad of New Jersey?

Mr. WATERMAN. About $1,000,000 in par value.

Mr. SHEARN. How many shares are there?

Mr. WATERMAN. $50 is par value. It would be about 20,000 shares.

Mr. SHEARN. Of the 20,000 shares, how many are owned by the Central Railroad of New Jersey?

Mr. WATERMAN. About nine-tenths of the total amount.

Mr. SHEARN. The balance is held by persons who qualify as directors of the company?

Mr. WATERMAN. No; owned by the Central Railroad of New Jersey.

558 Mr. SHEARN. I understood you to say that nine-tenths of the stock is owned by the Central Railroad of New Jersey?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. Do you know how the balance is held?

Mr. WATERMAN. It is held by different parties—quite a number.

Mr. SHEARN. Are they directors of the Central Railroad of New Jersey?

Mr. WATERMAN. The directors hold some.

Mr. SHEARN. Where is the principal office of the Central Railroad of New Jersey?

Mr. WATERMAN. At New York City. Do you mean the legal office or the operating office?

Mr. SHEARN. The legal office.

Mr. WATERMAN. It is in Jersey City.

Mr. SHEARN. Where is the principal office of the Lehigh and Wilkesbarre Coal Company?

Mr. WATERMAN. In Philadelphia.

Mr. SHEARN. Where are the books of the Lehigh & Wilkesbarre Coal Company kept?

559 Mr. WATERMAN. In Philadelphia.

Mr. SHEARN. And the Central Railroad of New Jersey books?

Mr. WATERMAN. In New York City.

Mr. SHEARN. What is the principal anthracite terminal of the Central Railroad of New Jersey in this vicinity?

Mr. WATERMAN. At Port Johnson and Elizabethport.

Mr. SHEARN. You have been served with a subpœna calling upon you to produce all contracts for the transportation of anthracite coal entered into between the Central Railroad of New Jersey and others, and all contracts for the purchase of anthracite coal since January 1st, 1901. Are there such in existence?

Mr. THORNE. He has been served as secretary of the railroad company.

Mr. SHEARN. Yes, sir.

Mr. WATERMAN. There are no contracts that I know of for the transportation of coal.

Mr. SHEARN. Are there any contracts you know of between the railroad company and third parties for the purchase by the railroad company of anthracite coal?

560 Mr. WATERMAN. Not by the railroad company; no, sir.

Mr. SHEARN. You have also been served as secretary of the Lehigh & Wilkesbarre Coal Company, have you not, with a subpœna to produce similar contracts?

Mr. WATERMAN. I have; yes, sir.

Mr. SHEARN. Are there any contracts that have been entered into since January, 1901, by the Lehigh & Wilkesbarre Coal Company and a third party for the transportation of anthracite coal?

Mr. WATERMAN. For the transportation?

Mr. SHEARN. Yes, sir.

Mr. WATERMAN. Not that I know of.

Mr. SHEARN. Are there any contracts in your possession for custody entered into since January, 1901, between the Lehigh & Wilkesbarre Coal Company and third parties for the purchase of anthracite coal?

Mr. WATERMAN. There were some contracts entered into.

Mr. SHEARN. How many?

Mr. WATERMAN. Three, as I am aware.

Mr. SHEARN. Since January, 1901?

561 Mr. WATERMAN. Yes, sir.

Mr. SHEARN. Do you know whether those contracts are still in existence?

Mr. WATERMAN. I presume they are.

Mr. SHEARN. They are in your custody, are they not?

Mr. WATERMAN. No, sir; not at present.

Mr. SHEARN. In whose custody are they?

Mr. WATERMAN. The last I saw of them they were handed to our counsel.

Mr. THORNE. They are in my custody now.

Mr. SHEARN. But legally they are in his custody?

Mr. THORNE. Yes, sir.

Mr. SHEARN. As an officer of the Lehigh & Wilkesbarre Coal Company, you have the custody of the three contracts spoken of, have you not?

Mr. WATERMAN. I did have.

Mr. SHEARN. You brought them here in answer to that subpoena and have just handed them to your counsel, Mr. Thorne?

562 Mr. WATERMAN. That is it.

Mr. SHEARN. Is one of those contracts with the Red Ash Coal Company?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. Is another with the North American Coal Company?

Mr. WATERMAN. No, sir.

Mr. SHEARN. Is another with the Crescent Coal Company?

Mr. WATERMAN. No, sir.

Mr. SHEARN. Is one with the Alden Coal Company?

Mr. WATERMAN. No, sir.

Mr. SHEARN. Is one with the Melden Coal Company?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. Is one with the Parrish Coal Company?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. Those are the three?

Mr. WATERMAN. Yes, sir.

563 Mr. SHEARN. You have no contracts with the upper Lehigh Company or Wood, Reed & Company?

Mr. WATERMAN. I never saw any.

Mr. SHEARN. Or the Crescent Coal Company?

Mr. WATERMAN. Not that I know of.

Mr. SHEARN. Or the Lehigh Coal & Navigation Company?

Mr. WATERMAN. Not that I know of.

Mr. SHEARN. Please produce those contracts.

Mr. WATERMAN. They are not in my hands.

Mr. THORNE. Witness, under advice of counsel, declines to produce the contracts for the reason that they are not germane to any issue presented

before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and they are contracts with third parties who are not parties to this proceeding and action, and are private business and should not be made public and disclosed in this proceeding.

Com'r PROUTY. Is any of the stock of your coal company on the market?

Mr. WATERMAN. I never saw any sales of it through the stock exchange.

564 Com'r PROUTY. Is it owned by the people that own it for an investment—does it pay a dividend?

Mr. WATERMAN. No, sir.

Com'r PROUTY. How long since it paid a dividend?

Mr. WATERMAN. I do not remember. Not since I have been secretary—two years.

Com'r PROUTY. Is it owned by these people as bona fide owners or simply held by them for the convenience of the railroad company?

Mr. WATERMAN. Do you speak of the stock held by the railroad company?

Com'r PROUTY. No; by individuals. You say $1,000,000 in par value is owned by individuals. Do they own that bona fide on their own account or hold it for the railroad company?

Mr. WATERMAN. They hold it for their own account, as I understand. So far as the books disclose, it belongs to the individuals.

Com'r PROUTY. Mr. Shearn read you a list of independent coal operators. Do those companies all operate on your line?

565 Mr. WATERMAN. I do not know as to that. Some of them ship over our line, for instance, the Lehigh Coal & Navigation Company. As to the others, I do not know.

Com'r PROUTY. How many are there operating on your line with whom you do not have these contracts—I mean on the line of the railroad; how many companies operate upon the line of the Central Railroad of New Jersey are there with whom the Lehigh & Wilkesbarre Coal Company has not a contract?

Mr. WATERMAN. You mean to ship coal?

Com'r PROUTY. To mine and ship.

Mr. WATERMAN. I could not answer that from memory. Nearly everyone that mines coal ships over the railroad more or less.

Com'r PROUTY. Can you tell what part of the coal shipped over your road is owned by the railroad company?

Mr. WATERMAN. I could not answer that.

Com'r PROUTY. Can you tell what part of the coal shipped over your road and not mined by the Wilkesbarre Company is owned by independent operators?

566 Mr. WATERMAN. I have no information on that subject.

Com'r FIFER. What did the stock of the coal & iron company sell for at the last sale?

Mr. WATERMAN. $17 for 50—that is, $17 for the par value of the stock.

Com'r FIFER. Is it on the market for sale now?

Mr. WATERMAN. I could not answer that. I do not know.

Com'r FIFER. When was the last sale that you know of?

Mr. WATERMAN. Within three months.

Mr. THORNE. Is the stock of the Lehigh & Wilkesbarre Coal Company listed on the New York Stock Exchange?

Mr. WATERMAN. I understand it is.

The CHAIRMAN. We think you should be required to produce those contracts.

Mr. THORNE. And witness, on the counsel's advice, will decline to produce them.

The CHAIRMAN. And the Commission directs him to produce the contracts.

Mr. THORNE. I think that makes the record.

567 Mr. SHEARN. Do you know anything about the ownership of capital stock of the Central Railroad of New Jersey?

Mr. WATERMAN. Something; yes, sir.

Mr. SHEARN. What company owns the majority of the stock of the Central Railroad of New Jersey?

Mr. WATERMAN. The Reading Company, I understand.

Mr. SHEARN. Who is president of the Reading Company?

Mr. WATERMAN. I do not think I can testify.

Mr. SHEARN. Don't you know?

Mr. WATERMAN. I do not know. I understand, but I do not know.

Mr. SHEARN. You said you understood that the small fraction of the stock of the Lehigh & Wilkesbarre Coal Company that was not owned by the Central Railroad of New Jersey was held by bona fide investors?

Mr. WATERMAN. That would be the indication from the stock books. There are a large number of names spread throughout the country.

568 Mr. SHEARN. How many names are there?

Mr. WATERMAN. Well, from memory I would say 70 or 75. I may be mistaken as to the number, but I think that is about the number.

Mr. SHEARN. Do you attend the annual meetings of the Lehigh & Wilkesbarre Coal Company?

Mr. WATERMAN. I have attended one; yes, sir.

Mr. SHEARN. Did you ever see one of these 70 minority stockholders present at any meeting?

Mr. WATERMAN. At the only meeting I attended there was a gentleman that I understood was a stockholder, and I understood that he represented others.

Mr. SHEARN. He was the only one of the 70?

Mr. WATERMAN. He was the only one I knew.

Mr. SHEARN. That is the only annual meeting of the stockholders of the Lehigh & Wilkesbarre Coal Company you attended?

Mr. WATERMAN. The only one.

Mr. SHEARN. Where was that held?

Mr. WATERMAN. In Philadelphia.

Mr. SHEARN. When?

Mr. WATERMAN. In February, 1902.

569 Mr. SHEARN. What building in Philadelphia?

Mr. WATERMAN. The Reading Terminal.

Mr. SHEARN. That is where the offices of the Central Railroad of New Jersey are located, is it not?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. And of the Philadelphia & Reading Railway Company?

Mr. WATERMAN. Yes, sir.

Mr. SHEARN. You have read these three contracts, have you not?

Mr. WATERMAN. I have looked over them; yes, sir.

Mr. SHEARN. You are familiar with their essential features?

Mr. WATERMAN. I could not say that I am.

Mr. SHEARN. You know, do you not, that they provide for the purchase of coal?

Mr. THORNE. I object to all inquiry of the witness as to the contents of the contracts, and advise witness to decline to answer; to be in line with my previous advice as to the contract itself. If counsel is entitled to the contents of the contracts, he is entitled to them by the
570 contracts themselves, and he can not get them by indirection.

Mr. SHEARN. I think I can, and I object to counsel advising the witness not to answer.

Mr. THORNE. I object to the question as improper.

Com'r PROUTY. Do you know anything about the way this coal is handled except what you learned from the contracts themselves?

Mr. WATERMAN. That is about all. I am not connected with the operation closely enough to know.

Com'r PROUTY. Whatever knowledge you have of that is derived from reading the contracts?

Mr. WATERMAN. That is all.

The CHAIRMAN. That being so, it seems to me the objection is well taken.

Mr. SHEARN. Do you know what is charged by the Central Railroad of New Jersey to the Lehigh & Wilkesbarre Coal Company for the transportation of coal from the anthracite coal fields to tidewater when that coal is coal purchased under these contracts?

Mr. WATERMAN. I do not.

Mr. SHEARN. Do you know what part, if any, of the purchase
571 price realized at tidewater on sales of anthracite coal made by the Lehigh & Wilkesbarre Coal Company of coal purchased under these contracts is returned or paid by the Lehigh & Wilkesbarre Coal Company to the vendor of the coal, the mine owner?

Mr. WATERMAN. The amount paid to the seller of the coal?

Mr. SHEARN. Yes, sir.

Mr. WATERMAN. My recollection of the contracts——

Mr. THORNE. I object. He is not testifying from his recollection of the contracts.

Mr. SHEARN. I object to counsel interfering with the witness.

Mr. THORNE. I think the witness should understand the ruling of the court, which is that he may answer the questions from his own knowledge.

Mr. SHEARN. Anyone who is of age knows that that rule applies to all evidence. I asked if he knew and it calls for an answer—yes or no. Will the Commission rule on it?

The CHAIRMAN. What is the question?

572 Mr. SHEARN. I will ask to have it repeated.

Stenographer repeated the question, as follows:

"Do you know what part, if any, of the purchase price realized at tide water on sales of anthracite coal made by the Lehigh & Wilkesbarre Coal Company of coal purchased under these contracts is returned or paid by the Lehigh & Wilkesbarre Coal Company to the vendor of the coal—the mine owner?"

Mr. THORNE. I have no objection to that question.

The CHAIRMAN. I understood him to say afterwards that he had no knowledge except his recollection of the contracts.

Mr. SHEARN. Have you any personal knowledge on that subject?

Mr. WATERMAN. No, sir.

Mr. SHEARN. Do you know of your own knowledge what rate of freight is charged, if any, by the Central Railroad of New Jersey against the Lehigh & Wilkesbarre Coal Company for coal shipped from the anthracite coal regions to tide water when that coal is coal pur-

573 chased from third parties under these contracts?

Mr. WATERMAN. I have no knowledge as to rates.

Mr. SHEARN. That is all.

The CHAIRMAN. Do you desire to ask the witness any questions, Mr. Thorne?

Mr. THORNE. No, sir.

The CHAIRMAN. That seems to be all. You are excused, Mr. Waterman.

Mr. SHEARN. I call upon the Erie Railroad Company. Is the secretary here?

Mr. BROWNELL. The secretary is not here. He was not called for to-day.

Mr. SHEARN. I call upon the Erie Railroad Company through its secretary, and upon the Hillside Coal & Iron Company through its secretary, and upon the Pennsylvania Coal Company through its secretary, and upon the Scranton Coal Company through its secretary, to produce all contracts for the purchase of anthracite coal entered into between each of those companies and third parties since January 1st, 1901.

574 Mr. BROWNELL. The secretary of the Erie Railroad Company is not in court, not having been summoned for to-day. Counsel said yesterday that the witnesses, naming them, would not be expected to be here until to-morrow. I will say for counsel's information that if he were here he would state that the Erie Railroad Company has entered into no contract for the purchase of anthracite coal or the transportation of anthracite coal, except so far as such contracts for transportation are governed by the tariffs on file with the Interstate Commerce Commission since the dates mentioned by you. That answers your inquiry, perhaps, so far as the secretary of the Erie Railroad Company is concerned.

Mr. SHEARN. I do not understand the exception.

Mr. BROWNELL. You have asked for contracts. You have not designated whether you desired written contracts alone. I assumed that that was all required.

Mr. SHEARN. Yes, sir.

Mr. BROWNELL. In order that there may be no question, I stated that there has been transportation of coal by the Erie. It has not been done under special contracts, but under contracts, I suppose, implied
575 in entering into the arrangements called for by the rates on file with the Interstate Commerce Commission. There has been no contracts for the purchase of anthracite coal.

Mr. SHEARN. Has there been a contract for the transportation of anthracite coal?

Mr. BROWNELL. Nothing further than is implied in the taking advantage of its tariff rates as filed with the Commission.

Mr. SHEARN. How about the contract between the Erie Railroad Company and the Delaware & Hudson Company?

Mr. BROWNELL. I know of none such, and the secretary would state that there is no such contract if he were here.

Mr. SHEARN. Now, coming to the Hillside Coal & Iron Company, has the Hillside Coal & Iron Company entered into any contracts for the transportation of anthracite coal since January, 1901?

Mr. BROWNELL. The secretary is not here. If he were, he would state that the Hillside Coal & Iron Company is a corporation under the
576 laws of Pennsylvania, lawfully engaged in the purchase and handling of coal; is not engaging in the transportation of coal, and has at no time made contracts for transportation. It has in its legal capacity made purchases of coal from third parties, neither being parties to this proceeding.

Mr. SHEARN. The capital stock of the Hillside Coal & Iron Company is owned by what company?

Mr. BROWNELL. I do not know, nor may I presume in the absence of the secretary what he would testify to. In order to meet this question fairly, I am willing to do so, but I do not wish to proceed as counsel and be chief witness in the case, so I must decline to give any testimony. So far as raising this question is concerned, I am perfectly willing to waive the absence of the secretary.

Mr. SHEARN. Won't you send for the secretary and ask him to come over this afternoon?

Mr. BROWNELL. I do not think the secretary is available this afternoon. I thought you desired the raising of the question of the presence of the contracts or their production.

Mr. SHEARN. Perhaps we can get along as it is.

577 Mr. BROWNELL. I will state this fact, which is all I know, that the Hillside Coal & Iron Company has various stockholders living in various States, and that its capital stock is not entirely owned by the Erie Railroad Company.

578 Mr. SHEARN. You understand the vast majority is owned by the railroad company.

Mr. BROWNELL. My understanding is a large majority is.

Mr. SHEARN. How about contracts for purchase entered into between the Hillside and other companies since January 1, 1901?

Mr. BROWNELL. The secretary would state that the Hillside Company has entered into contract with outside third parties for the purchase of anthracite coal, but not bearing upon transportation, and no other contract.

Mr. SHEARN. Is one of those contracts with the Delaware and Hudson Company?

Mr. BROWNELL. Well, as to whom they are with—I will state that there are one or more contracts—I think six or eight.

Mr. SHEARN. Will you have the secretary present on Friday?

Mr. BROWNELL. I will, if it is possible.

Mr. SHEARN. There are to your knowledge contracts in existence
579 for the purchase of anthracite coal entered into since January 1, 1901, between the Hillside Coal & Iron Company and third parties.

Mr. BROWNELL. Yes, sir; a number of contracts, solely for the purchase of coal.

Mr. SHEARN. And they are in the custody of the secretary of the Hillside Coal & Iron Company?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. And he has been duly subpœnaed to produce them?

Mr. BROWNELL. I should raise no question as to the correctness of the subpœna, but he was not subpœnaed to be present at this time. I will produce him.

Mr. SHEARN. Will you produce these contracts?

Mr. BROWNELL. You may assume for that purpose that Mr. Richardson, the secretary, is here, and counsel for the companies as well as counsel for the coal company object to the introduction in evidence of those contracts upon the ground stated by other respondent companies.

Mr. SHEARN. Then as to the contract between the Scranton Coal Company and third parties entered into since January 1, 1901——

Mr. BROWNELL. I have no knowledge of such a company. That is not an Erie Company.

580 The CHAIRMAN. It would be better to have the secretary here to answer those question'.

Mr. SHEARN. Mr. Gowen and Mr. Ross have their contracts here.

Mr. BROWNELL. I have a number of the contracts you refer to here. I waive any question of Mr. Richardson's absence, but I can not be expected to act as a witness.

Mr. SHEARN. Have you with you any contracts for the purchase of anthracite coal entered into since January 1, 1901, between the Pennsylvania Coal Company and third parties?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. BROWNELL. On behalf of the secretary, in whose possession they legally are, I object to its introduction upon all of the grounds stated before.

Mr. SHEARN. Have you with you any of the contracts entered into by the Hillside Coal & Iron Company with third parties?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. You have them with you in court?

Mr. BROWNELL. Yes, sir.

581 Mr. SHEARN. Delivered to you by the secretary of the Hillside Coal & Iron Company?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. BROWNELL. Assuming that they are in the possession of the secretary, or in my possession, I object to their being received in evidence upon the same grounds.

Mr. SHEARN. I ask the Commission to direct the secretary of the Hillside Coal & Iron Company and the secretary of the Pennsylvania Coal Company to produce those contracts. They are here in court.

The CHAIRMAN. Mr. Brownell, you are counsel for this Hillside Coal & Iron Company?

Mr. BROWNELL. For the Hillside Coal & Iron Company; yes, sir; I am counsel for that company.

The CHAIRMAN. Upon the statement you have just made that you have them in your possession, you are required to produce them in the case.

Mr. BROWNELL. And I respectfully decline to do so upon the grounds that have been stated by me, and upon the grounds stated by other counsel.

Com'r CLEMENTS. Were they brought here by the witness and turned over to you as counsel?

582 Mr. BROWNELL. They were turned over to me. He was not here because he was not to be called to-day.

Com'r CLEMENTS. They were brought here in obedience to a subpœna and placed in your hands?

Mr. BROWNELL. Yes, sir.

Mr. SHEARN. I call upon the New York, Ontario & Western Railway Company.

Mr. CARR. I understand, Mr. Shearn, that our secretary was subpœnaed?

Mr. SHEARN. Yes, sir.

Mr. CARR. And I understood from what you said that he would not be required to be here until Friday, and I told him it would not be necessary for him to be in town to-day.

Mr. SHEARN. We will wait until Friday, then. Will you have him in court Friday?

Mr. CARR. Yes, sir. I prefer to put him on the stand.

The CHAIRMAN. Let me ask you, Mr. Shearn, have you witnesses subpœnaed for to-morrow sufficient to occupy the day?

Mr. SHEARN. Yes, sir. Now, I call upon the Delaware & Hud-

583 son Company—no, I will pass the Delaware & Hudson Company for the moment.

Mr. KERR. Call upon them to produce what?

Mr. SHEARN. I want your contract with the Erie Company, but we have not issued a subpœna for it.

Mr. KERR. You have not served a subpœna or given any notice?

Mr. SHEARN. I give you notice now that we are going to serve a subpœna. Now I call on the Secretary of the New York, Susquehanna & Western.

Mr. BROWNELL. What I stated relative to the Erie Railroad Company will apply to that company. The New York, Susquehanna & Western has made no contract for the transportation of coal other than under the lawful rate.

Mr. SHEARN. How about the purchase?

Mr. BROWNELL. It has made no contract for the purchase of anthracite coal. Of course, in making this general statement, it has of course

purchased fuel coal for its own purposes, and it has obtained it from companies in which it is interested. Otherwise it has bought none.

584 Mr. SHEARN. The Philadelphia & Reading Coal & Iron Company. Is the secretary here?

Mr. CAMPBELL. The secretary is here. The coal and iron company is not a party to this proceeding.

Mr. SHEARN. I ask the secretary of the Philadelphia Coal & Iron Company to take the stand.

Mr. CAMPBELL. I object to this witness being sworn. For what purpose do you ask this witness to testify? I understand, your honors, that he is here solely in obedience to your process duces tecum to produce certain contracts of the description which has been so frequently mentioned here, and if that is the purpose for which this witness is desired to be sworn, I object to it for the reasons already presented, but if counsel see fit to assure your honors that he desires his testimony upon some other point, I will withdraw the objection and raise the questions I have in mind in another way.

Mr. SHEARN. I do not think I am called upon to state in advance of the witness being sworn, and I decline to do so.

585 Mr. CAMPBELL. The question of competency as to testimony can be raised in advance of the witness being sworn to tell the truth and the whole truth. The testimony may not be competent. I present this matter now with a great deal of hesitation, from the fact that I discovered in the examination of Mr. Waterman, of the Central Railroad of New Jersey, that there may be some legitimate enquiry to be put to the witness in addition to reference to these papers, and I withdraw that objection for a moment. I want to warn the Commission and counsel that this question may be fully raised.

The CHAIRMAN. You withdraw your objection to the secretary being sworn?

Mr. CAMPBELL. Yes, sir.

586 WILLIAM G. BROWN, a witness called on behalf of complainant, having been duly sworn, testifies as follows:

Mr. SHEARN. Mr. Brown, you are the secretary of the Philadelphia & Reading Coal & Iron Company?

Mr. BROWN. Yes, sir.

Mr. SHEARN. And have been for how long?

Mr. BROWN. For about five years; five and a half years.

Mr. SHEARN. That is a corporation organized under the laws of what State?

Mr. BROWN. The State of Pennsylvania.

Mr. SHEARN. Where is its principal place of business?

Mr. BROWN. Its principal office is in the city of Philadelphia.

Mr. SHEARN. In what building?

Mr. BROWN. In the Reading Terminal.

Mr. SHEARN. That is the office of the Reading Company and
587 the Philadelphia & Reading Railroad Company, is it not?

Mr. BROWN. Yes, sir.

Mr. SHEARN. Who is president of your company?

Mr. BROWN. Of which company?

Mr. SHEARN. Of the Philadelphia & Reading Coal & Iron Company?

Mr. BROWN. Mr. George F. Baer.

Mr. SHEARN. Are you an officer of the Philadelphia & Reading Railway Company?

Mr. BROWN. No, sir.

Mr. SHEARN. Or of the Reading Co.?

Mr. BROWN. No, sir.

Mr. SHEARN. What business is the Philadelphia & Reading Coal & Iron Company engaged in?

Mr. BROWN. In the mining and sale of coal.

Mr. SHEARN. Of anthracite coal?

Mr. BROWN. Of anthracite coal.

Mr. SHEARN. Exclusively?

Mr. BROWN. Exclusively.

Mr. CAMPBELL. Mr. Brown is mistaken; it buys bituminous also.

588 Mr. BROWN. We buy and sell some bituminous, also.

Mr. SHEARN. But your principal business is buying and selling anthracite coal?

Mr. BROWN. Yes, sir.

Mr. SHEARN. What is the capital stock of the company?

Mr. BROWN. Eight million dollars.

Mr. SHEARN. Who owns it?

Mr. BROWN. It is owned almost entirely by the Reading Company.

Mr. SHEARN. Is it not owned entirely by it?

Mr. BROWN. It is owned entirely.

Mr. SHEARN. And has been so long as you have known anything about it, has it?

The CHAIRMAN. Ask him if he knows how long.

Mr. CAMPBELL. I don't want the witness to be misled. Since about the first day of December, 1896, it has been owned by the Reading Company, but not before.

Com'r PROUTY. What is the Reading Company?

589 Mr. CAMPBELL. It is a corporation which holds the stock, as well as other investments—the stock of the Philadelphia & Reading Coal & Iron Co., the stock of the Philadelphia & Reading Railway Company——

Mr. SHEARN. A sort of Northern Security?

Mr. CAMPBELL. No, sir; it is not a sort of Northern Security in any shape, manner, or form. The majority of the stock of a large number of affiliated and associated lines of railroad that are called the Reading System are held.

Com'r PROUTY. Is it an operating company?

Mr. CAMPBELL. No, sir; it does not do any business whatever, except hold these investments. It holds the stock of a great many companies, and sends proxies to annual meetings to elect directors when it holds a controlling interest, and votes for directors when it has a minority. It is what you will understand to be a holding company.

Com'r PROUTY. That company owns the entire capital stock of the Philadelphia & Reading Coal & Iron Co.?

Mr. CAMPBELL. It has a legal ownership sufficient to qualify directors.

Mr. SHEARN. The annual report shows it owns all.

590 Mr. PROUTY. How much of the stock of the Philadelphia & Reading Railway Company does it own?

Mr. CAMPBELL. All of it in the same way.

Mr. SHEARN. Now, Mr. Brown, that is a correct statement, is it, that since December, 1896, all of the stock of the coal & iron company has been owned by the Reading Co.?

Mr. BROWN. It has, to the best of my recollection.

Mr. SHEARN. Were you connected with the coal & iron co. before the foreclosure of the Philadelphia & Reading R. R. Co.?

Mr. BROWN. No, sir.

Mr. SHEARN. Do you know whether the Phila. & Reading R'y Co. owned before Dec., 1896, all of the stock of the coal & iron company?

Mr. BROWN. Not of my own personal knowledge.

Mr. SHEARN. Do you know what the name of the Reading Co. was prior to Dec., 1896? Was it the Excelsior Co.?

Mr. BROWN. It was, I believe, the Excelsior Co.

Mr. CAMPBELL. You had better not go into that if he does not know.

591 Mr. SHEARN. Mr. Brown, you as secretary of the coal & iron Co. have custody of its papers and contracts, have you not?

Mr. BROWN. I have; yes, sir.

Mr. SHEARN. You have been served with a subpœna to produce all contracts entered into between the Philadelphia Coal & Iron Co. and third parties for the purchase of anthracite coal since January 1, 1901, have you not?

Mr. BROWN. Yes, sir.

Mr. SHEARN. Are there such contracts in existence?

Mr. BROWN. There are.

Mr. SHEARN. And they are in your custody?

Mr. BROWN. They are in the custody of the counsel of the company. I gave them to counsel of our company in whose custody they are.

Mr. SHEARN. But they are in your lawful custody?

Mr. BROWN. I would have charge of them as records of the company.

Mr. SHEARN. And you had charge of them when the subpœna was delivered to you?

Mr. BROWN. Yes, sir.

592 Mr. SHEARN. And since then you have delivered them to Judge Campbell, your counsel?

Mr. BROWN. Yes, sir; at his request.

Mr. SHEARN. At his request?

Mr. BROWN. Yes, sir.

Mr. SHEARN. How many of such contracts have you delivered to him?

Mr. BROWN. I do not remember the exact number; six, seven, or eight, possibly.

Mr. SHEARN. Do you recollect the name of any of the third parties?

Mr. BROWN. I think some of them I do.

Mr. SHEARN. Please state those that you recollect.

Mr. BROWN. They have just dropped out of my mind.

Mr. SHEARN. Was one of them with Gerber & Seaman?

Mr. BROWN. No, sir.

Mr. SHEARN. Was one with the Brookwood Coal Co.?

Mr. BROWN. No, sir.

Mr. SHEARN. Was one with the Cambridge Coal Co.?
Mr. BROWN. No, sir.
Mr. SHEARN. Was one with the Thomas Coal Co.?
Mr. BROWN. No, sir.
593 Mr. SHEARN. Or with the Lawrence Coal Co., of Schuylkill County?
Mr. BROWN. I believe not.
Mr. SHEARN. You are not sure?
Mr. BROWN. I am not positive.
Mr. SHEARN. Was one with W. R. McTurk?
Mr. BROWN. A coal contract?
Mr. SHEARN. Yes, sir.
Mr. BROWN. Not one of our regular coal contracts; no, sir.
Mr. SHEARN. What do you mean by one of your regular coal contracts?
Mr. BROWN. I mean that we may have bought some coal from him during these months, but we have no specific regular contract during 1901.
Mr. SHEARN. What are your regular coal contracts?
Mr. CAMPBELL. I object.
Mr. SHEARN. Did you have contracts with W. R. McTurk?
Mr. BROWN. No, sir; I didn't say we had. I said we had no regular contract with him. We may have purchased a small portion.
594 Mr. SHEARN. Buying the output of his mine for all time—you mean you didn't have a regular contract of that sort?
Mr. BROWN. Yes, sir.
Mr. SHEARN. That is, the regular contract?
Mr. BROWN. That is the one you have reference to.
Mr. SHEARN. Have you one with the Excelsior Co., of Northumberland County?
Mr. BROWN. No.
Mr. CAMPBELL. He is showing, by exclusion, how many we have not got. I would be glad, if you desire, to look it up and give you the names, but this process of exclusion is very interesting.
Mr. SHEARN. I do not want to waste time, if he will inform me as to those which he has.
Mr. CAMPBELL. He can name them from this envelope. In giving these, Mr. Brown, indicate the difference between permanent and temporary contracts.
Mr. SHEARN. Give me the names of the companies with whom the Philadelphia & Reading Coal & Iron Company has these coal-purchase contracts.
Mr. CAMPBELL. Time contracts.
595 Mr. SHEARN. Coal-purchase time contracts.
Mr. BROWN. The Northumberland Coal Company—those are contracts made since January, 1901—the Northumberland Coal Company, the Royal Oak Coal Company, the St. Clair Coal Company, the Enterprise Coal Company, the East Ridge Coal Company, Benjamin F. Williams, the Pine Hill Coal Company, E. Wight Coal Company, and the Buck Run Coal Company.
Mr. SHEARN. How many contracts similar to that—those long-time contracts—were there in existence and in effect on January 1st, 1901?
Mr. BROWN. Repeat that question, please.

Mr. SHEARN. How many coal-purchase contracts denominated by counsel as long-time contracts were there in existence and in effect on January 1st, 1901?

Mr. BROWN. About the same number.

Mr. SHEARN. No more?

Mr. BROWN. Well, possibly there might have been two or three more.

Mr. SHEARN. Two or three more, you think, would include them all?

Mr. BROWN. Yes, sir.

596 Mr. CAMPBELL. I would like to correct the record right here. Has not that Northumberland contract expired?

Mr. BROWN. That has expired; yes, sir; it was for one year.

Mr. SHEARN. I was asking for long-term contracts. It was not one of them, then?

Mr. BROWN. It was made for one year from January 1, 1901. It expired in one year.

Mr. SHEARN. December 31, of the same year?

Mr. BROWN. Yes, sir.

Mr. SHEARN. Now, produce those contracts, please.

Mr. CAMPBELL. The witness is instructed to decline to produce the contracts, for the reasons stated by Mr. Thorne in respect to the demand made upon the Lehigh & Wilkes-Barre Company, and counsel asks the stenographer to set forth in the record these reasons.

I advise the witness to decline to produce the contracts, and I take it the Commission will deliver its directions as it has done in the other case.

597 The CHAIRMAN. By your objections you refer to what has been stated by other counsel?

Mr. CAMPBELL. By Mr. Thorne. I desire my record to be made exactly the same as Mr. Thorne's record was made, for he stated the reasons not set forth as fully by some other counsel.

The CHAIRMAN. The objections are overruled, and the Commission directs the witness to produce the contracts. [After a pause.] The witness declines to do so, under the advise of counsel.

Mr. SHEARN. Is the secretary of the Philadelphia & Reading Railway Company here?

Mr. CAMPBELL. He is.

The CHAIRMAN. Wait a moment. Do you wish to ask Mr. Brown any further questions?

Mr. SHEARN. No, sir; I think not.

The CHAIRMAN. Judge Campbell, do you desire to ask him any other questions?

Mr. CAMPBELL. No, sir.

The CHAIRMAN. Then he is excused.

Witness excused.

598 W. R. TAYLOR, witness called on behalf of complainant, having been duly sworn, testifies as follows:

Mr. SHEARN. You are secretary of the Philadelphia & Reading Railway Company?

Mr. TAYLOR. I am secretary of the Philadelphia & Reading Railway Company.

Mr. SHEARN. And have been how long?

Mr. TAYLOR. I have been ever since the organization of the company, the first of December, 1896.

Mr. SHEARN. Before that time were you secretary of the Philadelphia & Reading Railroad Company?

Mr. TAYLOR. I had been secretary of the Philadelphia & Reading Railroad Company since 1886.

Mr. SHEARN. You have been subpœnaed to produce all contracts for the transportation of anthracite coal entered into between that company and third parties since January 1, 1901?

Mr. TAYLOR. Yes, sir.

Mr. SHEARN. Are there any such contracts in existence?

599 Mr. TAYLOR. There are no contracts of that character in existence.

Mr. SHEARN. Have there been any such contracts entered into since January 1, 1901?

Mr. TAYLOR. There never have been such contracts entered into in my experience with the company.

Mr. SHEARN. Have there been any contracts entered into by that company with third parties for the purchase of anthracite coal other than coal required for its own use?

Mr. TAYLOR. No such contracts whatever.

Mr. SHEARN. Who are the officers of the Philadelphia & Reading Railway Company?

Mr. TAYLOR. Mr. George F. Baer, president; Mr. Theodore Voorhees, first vice-president; Mr. C. E. Henderson, second vice-president; Mr. W. A. Church, treasurer, and W. R. Taylor, secretary.

Mr. SHEARN. Are you an officer of the Reading Company?

Mr. TAYLOR. Yes, sir.

Mr. SHEARN. What office do you hold?

Mr. TAYLOR. I am secretary and treasurer.

600 Mr. SHEARN. Who are the officers of the Reading Company?

Mr. TAYLOR. Mr. George F. Baer is president, I am secretary, and Mr. W. A. Church is treasurer.

Mr. SHEARN. Who are the directors of the Philadelphia & Reading Railway Company?

Mr. TAYLOR. Shall I name them?

Mr. SHEARN. Yes, sir.

Mr. TAYLOR. Mr. Joseph F. Harris, Mr. John Lowber Welsh, George C. Thomas, H. V. McKean, and H. A. Dupont.

Mr. SHEARN. How many of those gentlemen are directors of the Reading Company?

Mr. TAYLOR. All of them.

Mr. SHEARN. How many of them are directors of the Philadelphia & Reading Coal & Iron Company?

Mr. TAYLOR. All except one.

Mr. SHEARN. Who is he?

Mr. TAYLOR. Mr. McKean.

Mr. SHEARN. Are you an officer of the Temple Iron Company?

Mr. TAYLOR. I am not, sir.

601 Mr. SHEARN. Have you ever been?

Mr. TAYLOR. I have never been; no, sir.

Mr. SHEARN. That is all.
Mr. CAMPBELL. No questions.
The CHAIRMAN. You are excused, Mr. Taylor.
Mr. CAMPBELL. Do you need these gentlemen, the secretaries of the companies, further?
Mr. SHEARN. No, sir; I do not think I shall need them at present. Is Mr. Safford in court?
Mr. SAFFORD. Yes, sir.
Mr. SHEARN. Will you take the stand, please?

S. HENRY SAFFORD, witness called on behalf of complainants, having been duly sworn, testifies as follows:
Mr. SHEARN. Mr. Safford, what is your business?
Mr. SAFFORD. I look after the interest of Coxe Bros. & Co., at Perth Amboy.
Mr. SHEARN. You are in the employment of Coxe Bros.?
Mr. SAFFORD. Yes, sir.
602 Mr. SHEARN. What is the business of Coxe Bros.?
Mr. SAFFORD. Shipping coal.
Mr. SHEARN. They mine coal, also, do they not?
Mr. SAFFORD. They mine it; yes, sir.
Mr. SHEARN. Where are you engaged in your business?
Mr. SAFFORD. At Perth Amboy, N. J.
Mr. SHEARN. Is that the point to which Coxe Bros. coal is brought for shipment?
Mr. SAFFORD. Yes, sir.
Mr. SHEARN. Water shipment?
Mr. SAFFORD. Water shipment; yes, sir.
Mr. SHEARN. What railroad has its terminal there?
Mr. SAFFORD. The Lehigh Valley.
Mr. SHEARN. Their coal for shipment all comes over the Lehigh Valley?
Mr. SAFFORD. All over the Lehigh Valley.
Mr. SHEARN. How many years have you had charge of the shipment of coal?
Mr. SAFFORD. About nineteen, at Perth Amboy.
Mr. SHEARN. You are then entirely familiar with the method
603 of unloading anthracite coal from the cars into barges and vessels, are you?
Mr. SAFFORD. Yes, sir.
Mr. SHEARN. And what have you had to do with the unloading of bituminous coal from cars into vessels?
Mr. SAFFORD. Some years ago I was engaged at Port Richmond, at Philadelphia, and at the time we had some bituminous coal there.
Mr. SHEARN. What firm were you with then—or what corporation?
Mr. SAFFORD. Day, Huddle & Co., John R. White, and the Reading Coal & Iron Company; that is, for the Reading Railroad Company.
Mr. SHEARN. Bituminous coal?
Mr. SAFFORD. Some bituminous coal—not much—principally anthracite.

Mr. SHEARN. But you are familiar with the method of shipping both?

Mr. SAFFORD. At that time; yes, sir.

Mr. SHEARN. At the terminal there, there are facilities for screening coal, are there not?

Mr. SAFFORD. Yes, sir.

Mr. SHEARN. And for storing coal?

Mr. SAFFORD. Yes, sir.

604 Mr. SHEARN. This coal, anthracite coal of Coxe Bros. brought in over the Lehigh Valley there, is often required to be stored for days at a time, is it not?

Mr. SAFFORD. Yes, sir.

Mr. SHEARN. What is the method of unloading coal from the cars on the trestle into the barges?

Mr. SAFFORD. It runs over the screen and directly into the schute.

Mr. SHEARN. By gravity?

Mr. SAFFORD. By gravity.

Mr. SHEARN. What is the method for unloading bituminous?

Mr. SAFFORD. The same method, though there is very little bituminous coal shipped at Perth Amboy—very little; at present there is none shipped from there.

Mr. SHEARN. What kind of coal does it cost the most to put from the cars into barges?

Mr. SAFFORD. It costs more to put bituminous coal.

Mr. SHEARN. Why?

Mr. SAFFORD. Well, it is not so easily moved. It hangs together and don't run off as easy.

605 Mr. SHEARN. It takes more money to get it out of the cars into the barges?

Mr. SAFFORD. It takes more labor to unload it.

Mr. SHEARN. Do you know how much it costs per ton to unload anthracite into barges?

Mr. SAFFORD. No, I do not; for I have never kept any account while at Perth Amboy. I used to keep some account at Philadelphia from day to day.

Mr. SHEARN. Do you recollect what it showed?

Mr. SAFFORD. I think it cost two and a half to three cents a ton.

Mr. SHEARN. That was on what kind of coal?

Mr. SAFFORD. Anthracite.

Mr. SHEARN. Prepared sizes?

Mr. SAFFORD. Yes, sir.

Mr. SHEARN. Did you keep any figures as to the cost of unloading bituminous?

Mr. SAFFORD. At times; yes, sir.

Mr. SHEARN. What did you find that cost to be?

606 Mr. SAFFORD. Sometimes double.

Mr. SHEARN. Sometimes double?

Mr. SAFFORD. Yes, sir; sometimes not any more.

Mr. SHEARN. Do you know how the anthracite coal is loaded on cars at the mines?

Mr. SAFFORD. Yes, sir. In process of preparation it is run into a pocket or large recepticle and the car runs alongside of this recepticle or bin, as they call it, and the coal is run out of that into the car.

Mr. SHEARN. And loaded by gravity?

Mr. SAFFORD. Yes, sir; by gravity.

Mr. SHEARN. How is bituminous coal loaded?

Mr. SAFFORD. I have never been at a bituminous mine, but I presume in something of the same style.

607 Mr. SHEARN. What kind of cars bring anthracite coal to tide water?

Mr. SAFFORD. An ordinary double truck car, carrying about 25 tons, some of them 20 tons, and some of them 45 and 50.

Mr. SHEARN. What kind of cars bring bituminous?

Mr. SAFFORD. Same kind of cars.

Mr. SHEARN. Do you know anything about the relative specific gravity of the two coals?

Mr. SAFFORD. No; I don't. That is, anthracite coal is heavier coal, in the same bulk; it don't bulk as much for the same weight; anthracite is a heavier coal.

Mr. SHEARN. That is, you get more bituminous coal into a car a given weight than you can anthracite?

Mr. SAFFORD. No; you can get more anthracite than you can bituminous.

Cross-examination:

Mr. GOWEN. How many sizes is anthracite coal shipped in?

Mr. SAFFORD. Eight or nine sizes.

Mr. GOWEN. Bituminous coal comes in what——

608 Mr. SAFFORD. I think about two sizes. There is some lump; it is practically the run of the mine.

Mr. GOWEN. When it reaches destination and the anthracite is unloaded you have got to keep the sizes separate, of course?

Mr. SAFFORD. Sizes are kept separate.

Mr. SHEARN. How large storage grounds are located at Perth Amboy for anthracite coal?

Mr. SAFFORD. About 250,000 tons.

Mr. GOWEN. And during certain seasons of the year it is necessary to unload and store anthracite?

Mr. SAFFORD. Yes.

Mr. GOWEN. It is not necessary to do that with bituminous?

Mr. SAFFORD. Well, they ship very little bituminous at Perth Amboy; I do not know of any bituminous coal going into stock there.

Mr. GOWEN. You know in point of fact bituminous coal is not stocked because of the danger——

Mr. SAFFORD. Yes, sir; danger of combustion.

Commissioner PROUTY. Do Cox Brothers ship over the Lehigh Valley Railroad?

609 Mr. SAFFORD. I am not familiar with all the Cox Brothers business. All I know of their business is what they ship at Perth Amboy, although I do know of it going out West.

Mr. PROUTY. Could they ship from their mines over any other line than the Lehigh Valley?

Mr. SAFFORD. Yes, of course.

Commissioner PROUTY. That is to say, other railroads reach their mines?

Mr. SAFFORD. Yes.

Commissioner PROUTY. Do they handle their coal as an independent proposition, or do they sell it to some coal company?

Mr. SAFFORD. They mine it and ship it themselves.

Commissioner PROUTY. Are they to the expense of loading the coal on the cars, or does the railroad do that?

Mr. SAFFORD. At the mines they load it on the cars.

Commissioner PROUTY. Who is to the expense of unloading it?

Mr. SAFFORD. The railroad company, the Lehigh Valley.

610 Mr. GOWEN. Are you not mistaken in saying that Cox Brothers could ship by other roads than the Lehigh Valley? What railroad reaches their mines?

Mr. SAFFORD. The Central and the Pennsylvania.

Mr. GOWEN. How many of their mines are reached by the Central Railroad of New Jersey?

Mr. SAFFORD. I do not know.

Mr. GOWEN. How many by the Pennsylvania?

Mr. SAFFORD. I do not know.

Mr. GOWEN. Do you know whether any of them——

Mr. SAFFORD. Yes.

Mr. GOWEN. Tell us which ones are?

Mr. SAFFORD. I don't know.

Mr. GOWEN. Certainly, if you know that some are, you must be able to give us the names?

Mr. SAFFORD. I am not familiar with the mines. I know they ship over the Pennsylvania what goes out to Buffalo.

Mr. GOWEN. I am asking you now whether either the tracks of the Central Railroad of New Jersey or the tracks of the Pennsylvania Railroad reach any of the Cox Brothers' mines?

611 Mr. SAFFORD. I can answer in this way: Coxe Brothers have a yard up there, a distributing point, and the Pennsylvania Railroad reaches that point. Coxe Brothers have their own tracks——

Mr. GOWEN. Is not this the condition: That all the mines of Coxe Brothers & Company are located on the Delaware, Susquehanna and Schuylkill which Coxe Brothers own?

Mr. SAFFORD. Yes, sir.

Mr. GOWEN. That railroad connects with the Pennsylvania, with the Central of New Jersey, and with the Lehigh Valley?

Mr. SAFFORD. Yes, sir.

Mr. ROSS. How many mines have Coxe Brothers?

Mr. SAFFORD. I can not answer that. They have quite a number of openings, different mines, five or six.

Mr. ROSS. Any bituminous mines?

Mr. ROSS. No, sir.

Mr. ROSS. All hard coal mines?

Mr. SAFFORD. All hard coal mines.

Mr. ROSS. They ship coal all over the country?

Mr. SAFFORD. Wherever they can sell a pound of coal I presume they ship it.

612 Mr. ROSS. Your experience is althgether in anthracite coal?

Mr. SAFFORD. Altogether of Perth Amboy; I know nothing of Coxe Brothers & Company outside of that.

Mr. Ross. You know nothing about the mining and shipping of bituminous coal?

Mr. SAFFORD. Something about the shipping, but not mining. I have handled bituminous coal.

Mr. Ross. In recent years?

Mr. SAFFORD. No, sir; not very recent; when I used to ship at Port Richmond.

Mr. Ross. How long ago was that?

Mr. SAFFORD. During the sixties, up to seventy-three.

Mr. Ross. Since that time you have had no experience in bituminous coal?

Mr. SAFFORD. Not in bituminous coal; no, sir.

Mr. Ross. Not since 1873?

Mr. SAFFORD. Although I have seen lots of it shipped since that time, but I have had no personal business with it.

Mr. Ross. You were a witness in the case of Coxe Brothers against the Lehigh Valley?

613 Mr. SAFFORD. I was, sir.

Mr. KERR. Did I understand you to say that the cost of handling coal, delivering it, was 2½ cents a ton?

Mr. SAFFORD. Yes, sir; at times.

Mr. KERR. What does that include?

Mr. SAFFORD. That includes merely the handling of the coal over the chutes; it don't include the wear and tear, and it don't include the engine expenses——

Mr. KERR. Or the switching?

Mr. SAFFORD. No, sir.

Mr. KERR. Nor anything else?

Mr. SAFFORD. No; it is just merely labor, or handling it from the car into the boat?

Mr. KERR. Now, what do you include in the way of employes in the 2½ cents?

Mr. SAFFORD. I include the gangs that unload the coal, that is about all.

Mr. KERR. Do you mean the men that turn the hopper and let the coal down through the chute?

Mr. SAFFORD. Principally the men that unload the cars and put it in the boat.

614 Mr. KERR. How long have you had charge there?

Mr. SAFFORD. I have not had complete charge there; the Lehigh Valley do all that business; I don't keep any account at Perth Amboy; I just see that Coxe Brothers orders are carried out.

Mr. KERR. Then how have you any knowledge of it?

Mr. SAFFORD. I said when I was at Port Richmond, Philadelphia, we used to keep account from day to day to see how the work was running.

Mr. KERR. Did you keep any books?

Mr. SAFFORD. No special books, except I know what the circumstances were; I always wanted the pay roll to be inside the minute. I knew from day to day about what the expenses were—costs.

Mr. KERR. You do not operate the trestle where the coal is shipped?

Mr. SAFFORD. No; I did not operate the trestle.

Mr. KERR. You do not have charge of that?

Mr. SAFFORD. Now, I have nothing to do with it at all.

615 Mr. KERR. You are simply there to see that Coxe Brothers coal goes into the boats, and you report to them that it has been delivered into the boats?

Mr. SAFFORD. In good shape; yes, sir.

Mr. KERR. And you make the bills for Coxe Brothers?

Mr. SAFFORD. Now, the Lehigh Valley does all that; they do all the clerical work.

Mr. KERR. Then you do not know anything about it?

Mr. SAFFORD. As far as the expenses go I do not know anything about it.

Mr. SHEARN. What other elements are there in the cost of shipping anthracite coal besides the labor of the men at the chute?

Mr. SAFFORD. There is the wear and tear on plant; the switching expenses; the ore expenses.

Mr. SHEARN. Have you any knowledge as to what all those other necessary expenses amount to per ton?

Mr. SAFFORD. Not specially; no; but I know the switching expenses for anthracite coal are more than for bituminous. There is more sizes; it requires more space and more handling.

616 Mr. SHEARN. Well, is it materially more?

Mr. SAFFORD. In the way of expenses, yes; considerably more.

Mr. SHEARN. Considerably more?

Mr. SAFFORD. Yes.

Mr. SHEARN. Now, then, you speak of wear and tear. Is there any difference——

Mr. SAFFORD. No; I do not think the wear and tear would amount to anything more.

Mr. SHEARN. You speak of hoisting-engine expenses?

Mr. SAFFORD. Engine expenses would be more; the anthracite has more sizes to dispose of, to take care of; it requires more handling.

Mr. SHEARN. All of those elements make it more expensive to ship anthracite than bituminous?

Mr. SAFFORD. Yes, sir; but take it through and through, I think bituminous coal costs some more to ship than anthracite coal, if that is what you want to get at.

Mr. SHEARN. Yes; I say all those elements together make it more expensive?

617 Mr. SAFFORD. Yes, sir; add to the expense of the anthracite coal.

Mr. SHEARN. Well, but the total expense, as you understand it, of loading bituminous coal compares how with anthracite?

Mr. SAFFORD. It costs more than anthracite.

Mr. ROSS. How long ago did you make this estimate of 2½ cents a ton for loading anthracite coal?

Mr. SAFFORD. During 1860, on up to 1873, when I quit business at Perth Amboy.

Mr. ROSS. Thirty years ago you made the estimate?

Mr. SAFFORD. Yes, sir.

Mr. ROSS. You have not made any since then?

Mr. SAFFORD. No.
Mr. ROSS. Either for handling anthracite or bituminous?
Mr. SAFFORD. Yes.
Mr. ROSS. Where, about, was it you made the estimate?
Mr. SAFFORD. Port Richmond, Philadelphia.

618 CHARLES WESTON, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. Where do you reside?
Mr. WESTON. Philadelphia.
Mr. SHEARN. Were you engaged in the coal business with the Philadelphia & Reading Coal & Iron Company for a good many years?
Mr. WESTON. For the Philadelphia & Reading Company for a good many years?
Mr. SHEARN. For about thirty years all together?
Mr. WESTON. Oh, about thirty-seven years.
Mr. SHEARN. Did you have to do with the unloading of coal at tide water?
Mr. WESTON. Well, unloading of the cars?
Mr. SHEARN. Out of the cars into vessels and barges?

Mr. WESTON. Well, I had charge of Port Richmond for 21
619 years—about 21 years—so from 1865 to about the end of 1886.

Mr. SHEARN. Charge of their shipping terminal?
Mr. WESTON. Yes. Before that I had, however, been on the Reading Railroad for a number of years in the freight department.
Mr. SHEARN. Well, during that time you became entire familiar with the method of handling at the terminal bituminous coal and anthracite coal, did you not?
Mr. WESTON. Yes. Going over the works every day, I could not help but to have a good knowledge of it?
Mr. SHEARN. Which did you find in your experience to be more expensive to ship?
Mr. WESTON. To ship over the chute into barges?
Mr. SHEARN. Yes.
Mr. WESTON. Why, bituminous.
Mr. SHEARN. Why?
Mr. WESTON. Well, it don't run so free as the hard coal. It makes quite a difference. It requires more shovelling, more labor, even from the ends of the car, shoving it over the end of the trap from each
620 end. It takes more labor; sometimes it don't run over the chute so free; sometimes you have to have men to shove it down to shovel it. That is especially the case with bituminous coal at all times, and, especially during the winter in cold weather when it freezes, you know, there is a great deal more labor on it. It is not like hard coal. Hard coal is not hard to handle.
Mr. SHEARN. It takes fewer men to ship in the barges anthracite coal?
Mr. WESTON. Yes; it might make a difference of—well, I should say it would make a difference of possibly one or about two men, or two men on each—where four men would do it, why probably it would require six.
Mr. SHEARN. It would require six for anthracite?

Mr. WESTON. No; I mean four——

Mr. SHEARN. Six for bituminous where four would be required for anthracite?

Mr. WESTON. Yes; about that. I am just estimating.

Mr. SHEARN. Did you ever make any calculations that would
621 enable you to determine how much difference there was in the cost per ton of shipping anthracite and bituminous?

Mr. WESTON. I estimated it at two cents a ton, taking it all around. I was up before the Commission, you know, before.

Mr. SHEARN. In the Coxe Brothers case?

Mr. WESTON. Yes; in the Coxe Brothers case.

Mr. SHEARN. And you testified to the same effect in that case?

Mr. WESTON. I said two cents a ton. That is what I said, and that is what I would say, with my former knowledge of it.

Mr. SHEARN. That is the result of your thirty-six years experience in the business?

Mr. WESTON. Yes, sir; of course I was only in that line of business twenty-one years.

Mr. SHEARN. Only twenty-one?

Mr. WESTON. Yes, sir; but before that I was in the freight department for many years. Not at that point; at other points.

Mr. SHEARN. When you were in the freight department did you have to do with the coal?

Mr. WESTON. No; nothing to do with the coal.

622 Mr. SHEARN. Do you know how coal was loaded at the mines?

Mr. WESTON. No; I do not know much about that part of it.

Cross-examination:

Mr. MOOT. This statement that you have made is about putting the coal, the bituminous or the anthracite coal, through the chute into the vessel?

Mr. WESTON. At tide water; yes.

Mr. MOOT. And the two cents has reference to that?

Mr. WESTON. The difference between anthracite and bituminous.

Mr. MOOT. You think at the time you made this estimate the difference as things were then done was about two cents a ton for just putting it through the chute into the vessel?

Mr. WESTON. Yes; that is it.

Mr. MOOT. And this statement has no reference to loading
623 at the mines and the general doing of the business at all?

Mr. WESTON. No; nothing of the kind; in regard to shipping only.

Mr. MOOT. You do not intend to be an expert on shipping coal generally, but just simply on the handling of it in the vessel, I suppose?

Mr. WESTON. Well, I have a good knowledge; *I* knowledge extends all through the coal region from boyhood.

Mr. MOOT. But I understood you did not know about handling it at the mines?

Mr. WESTON. Oh, no.

Mr. MOOT. And I suppose you do not know, for instance, about handling it at the terminals here in this city?

Mr. WESTON. You mean at shipping points?

Mr. MOOT. Here in New York. Did you ever know about the handling of it in the terminals here?

Mr. WESTON. Oh, yes; I had a great deal to do with it at Elizabethport and Port Johnson; that was under my supervision.

Mr. MOOT. When did you cease to be in the coal business?

624 When did you cease to have knowledge of the business—to be active in it?

Mr. WESTON. '86.

Mr. MOOT. And when were you sworn as a witness in the case of Coxe Brothers?

Mr. WESTON. Well, that must have been about 1887 or 1888, somewhere along there.

Mr. MOOT. Well, the Commission, I believe, came into existence about 1887; it was soon afterwards?

Mr. WESTON. It was after I was no longer in the employ of the company.

Mr. MOOT. You had then ceased to be in the business?

Mr. WESTON Yes.

Mr. MOOT. A little while?

Mr. WESTON. Yes.

Mr. MOOT. It must have been about fifteen years since you were a witness in that case?

Mr. WESTON. 16 years, about.

Mr. MOOT. And you have not been connected actively with the business since?

Mr. WESTON. No; I have been out now about 16 years or over.

625 Mr. MOOT. Have you paid any attention to what changes have been made in the way coal has been and the machinery has been handled?

Mr. WESTON. I have looked around at the cars; some difference in the cars.

Mr. MOOT. You know there is some change?

Mr. WESTON. I know that; yes.

Mr. MOOT. But you have not paid enough attention to want to be sworn as an expert?

Mr. WESTON. No; but from what I saw I imagine that would be about what I said before.

Mr. MOOT. You saw some improvement in the last 16 years, since?

Mr. WESTON. Oh, certainly; some improvement.

Mr. KERR. How many sizes of anthracite were handled in 1886?

Mr. WESTON. Oh, we handled all the different sizes—broken, steamboat——

Mr. MOOT. What is that?

Mr. WESTON. We handled all the different sizes—lump, steamboat, broken, egg, stove, nut, pea coal; that is about all.

626 Mr. KERR. Do you know how many are handled now?

Mr. WESTON. How many sizes?

Mr. KERR. Yes; different sizes.

Mr. WESTON. No; I do not—well, I do to think there are any more.

Mr. CAMPBELL. Have you been to Port Richmond lately?

Mr. WESTON. Yes; I was up there on my own account, just to refresh my memory.

Mr. CAMBPELL. There are some changes in the arrangement?

Mr. WESTON. Yes, sir.

Mr. CAMPBELL. There has been a vast change in the system?

Mr. WESTON. Yes.

Mr. CAMPBELL. The piers, wharves, yards, and tracks have been vastly multiplied; have they not?

Mr. WESTON. No; they have not. They have been raised, you know.

627 Mr. CAMPBELL. But multiplied, increased in number, all of them?

Mr. WESTON. Yes.

Mr. CAMPBELL. That is not exactly what I——

Mr. WESTON. There are not more wharves, you know, but they have been raised up; they are higher, coal runs more freely, a little more freely.

Mr. CAMPBELL. In your day the anthracite—what proportion of bituminous coal came into the yards at Port Richmond?

Mr. WESTON. Oh, well, a very small portion, a very small proportion.

Mr. CAMPRELL. Very small; did not amount to anything?

Mr. WESTON. Yes; it amounted to something.

Mr. CAMPBELL. Proportionately, I mean, compared with the quantity of anthracite?

Mr. WESTON. I did not consider it amounted to a great deal; I had three or four bituminous shippers.

Mr. CAMPBELL. Then, what did come in would be shipped directly to the piers and loaded; there was no separation of different sizes?

Mr. WESTON. Oh, no; that makes quite a difference.

628 Mr. CAMPBELL. That is all; it makes all the difference in the world.

Mr. SHEARN. As to prepared sizes of coal, has there been any cheapening in the method of handling anthracite at the terminals since you last actively engaged in the business?

Mr. WESTON. Since?

Mr. SHEARN. Yes; in the matter of prepared sizes?

Mr. WESTON. Yes; some.

Mr. SHEARN. What are they; what are the differences?

Mr. WESTON. Well, on account of the wharves being higher, you know, coal runs more freely into the vessels.

Mr. SHEARN. But soft coal still sticks in the cars just as it used to?

Mr. WESTON. Well, there is more trouble in getting it from the ends of the car over the trap.

Mr. SHEARN. The trap is in the bottom of the car?

Mr. WESTON. Yes.

Mr. SHEARN. That is at a considerable distance——

629 Mr. WESTON. That is right, you put the trap right over the chute.

Mr. SHEARN. Precisely, but the trap is not as large as the entire floor, is it?

Mr. WESTON. No.

Mr. SHEARN. And the trap is some distance from either end of the car, is it not?

Mr. WESTON. Yes; right in the center.

Mr. SHEARN. So that in the case of bituminous—unloading bituminous at the terminal—you have to sweep out, shovel out, bituminous coal to get it into the chute?

Mr. WESTON. Yes.

Mr. SHEARN. And if you do it by hoisting you have to shovel it into the hoist—if it were done by hoisting?

Mr. WESTON. Well, but there is no such preparation.

Mr. SHEARN. It is not done that way?

Mr. WESTON. No.

Mr. SHEARN. Now, then, in the winter time, as you have said, it is a great deal more difficult to get the bituminous than the anthracite?

630 Mr. WESTON. It is more expensive to ship the bituminous than the hard coal, and that is even true at any time.

Mr. SHEARN. Thas is as true to-day as it was when you were in the business, is it not?

Mr. WESTON. Yes; except that the hard coal cars were more convenient then than the bituminous cars, but they were smaller; at that time we had what we call ten and five ton cars, you know; five-ton cars and what we call the 10-tons cars that carried about 12 or 14.

Mr. SHEARN. At that time hard coal cars were easier to ship from than they are now?

Mr. WESTON. Yes; they run more—I think they run—did not require so much labor, but what held good then I think would hold good now.

Mr. SHEARN. Well, coal is shipped to-day out of coal cars into barges and vessels in the same manner that it was during all your experience, is it not?

Mr. WESTON. Yes; in the same manner.

Mr. SHEARN. That is, through a chute from the bottom of the car?

631 Mr. WESTON. Yes, through a chute; but we frequently had to help it along, shove it, especially at certain stages of the tide, so that it was more expensive to handle the soft coal, what I always called the soft coal, I mean bituminous, than the hard.

Mr. SHEARN. When the tide was higher and the vessel was higher up there was not as much incline in the chute?

Mr. WESTON. Then there is more labor.

Mr. ROSS. Are you familiar with the cost of handling coal at Hoboken?

Mr. WESTON. No; I am not.

Mr. ROSS. On the Delaware, Lackawanna & Western?

Mr. WESTON. I have been there, but it has been many years ago. I could not tell you. I have no doubt they have made improvements.

Mr. ROSS. You do not know anything about the method or cost of handling coal there?

Mr. WESTON. No, I could not say.

632 JACOB H. OLHAUSEN, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. Where do you reside?

Mr. OLHAUSEN. Elizabeth.

Mr. SHEARN. Were you a witness in the case of Coxe Brothers against the Lehigh Valley Company?

Mr. OLHAUSEN. Yes.

Mr. SHEARN. At that time you were the general superintendent of the Central Railway Company of New Jersey, were you not?

Mr. OLHAUSEN. Yes.

Mr. SHEARN. Previous to that you had been the superintendent of the Manheim division of the Philadelphia & Reading Railroad, hadn't you?

Mr. OLHAUSEN. Yes, sir.

Mr. SHEARN. That division is in the Manheim coal region?

Mr. OLHAUSEN. Yes, sir.

Mr. SHEARN. How long had you been connected with the railroads at the time you testified in the Coxe case?

633 Mr. OLHAUSEN. Why, I think I was employed in the Philadelphia & Reading Railroad at that time about 33 years.

Mr. SHEARN. And were you familiar with the question of transportation of anthracite coal and bituminous coal?

Mr. OLHAUSEN. Anthracite coal, yes.

Mr. SHEARN. Were you also familiar with the shipment and transportation of bituminous coal?

Mr. OLHAUSEN. Not very much.

Mr. SHEARN. Well, you had seen a great deal of it handled over that road?

Mr. OLHAUSEN. I handled some after I came on the Jersey Central, but not on the Reading.

Q. Were you also familiar with the method of shipping at the terminals from the cars into the barges?

Mr. OLHAUSEN. Somewhat.

Mr. SHEARN. Both kinds of coal?

Mr. OLHAUSEN. Yes; but more so with anthracite.

Mr. SHEARN. You are familiar with the method of loading anthracite out of mines, are you not?

Mr. OLHAUSEN. Yes, sir.

Mr. SHEARN. How is it loaded into the cars?

634 Mr. OLHAUSEN. From chutes from the breakers.

Mr. SHEARN. By gravity?

Mr. OLHAUSEN. It runs in by gravity.

Mr. SHEARN. And the cars are made up into heavy trains, all of one traffic, are they not?

Mr. OLHAUSEN. Yes; but they have got to be gathered together at different points.

Mr. SHEARN. Now, then, are the cars in which anthracite is shipped similar to bituminous cars?

Mr. OLHAUSEN. Yes; practically so.

Mr. SHEARN. Practically the same? You have heard the testimony of the last two witnesses with reference to the difference in cost of shipping anthracite and bituminous?

Mr. OLHAUSEN. No; I don't know that I caught it.

Mr. SHEARN. Do you know which is more difficult to handle at the terminal in unloading by chutes—bituminous or anthracite coal?

Mr. OLHAUSEN. With the present method I think there is very little difference.

Mr. SHEARN. Well, in what respect do the methods differ now
635 from what they differed when you were a witness before?

Mr. OLHAUSEN. They have higher chutes and larger openings, and they can run it into the vessels better than they could before. The more pitch you give to bituminous coal the better it runs.

Q. When there is a slight pitch it is more difficult to load bituminous than anthracite, is it not?

Mr. OLHAUSEN. When there is a slight pitch, yes.

Mr. SHEARN. And as the tide rises there is less pitch?

Mr. OLHAUSEN. Less pitch; yes.

Mr. SHEARN. And more men are required to get the coal out of the car into the chutes?

Mr. OLHAUSEN. I do not know about that. It does not go as fast—probably not more men required.

Mr. SHEARN. It does not go as fast; there is no doubt about that?

MR. OLHAUSEN. No; no doubt about that.

Mr. SHEARN. And in the winter time the difference in the way the two coals run is quite marked, is it not?

Mr. OLHAUSEN. Well, I am not sure about that. I would
636 rather unload a car of bituminous coal than a car of frozen chestnut or buck.

Mr. SHEARN. Well, how about a carload of wet bituminous and a carload of wet anthracite?

Mr. OLHAUSEN. Why the wet anthracite would run better than the wet bituminous.

Mr. SHEARN. The chutes at the bottom of the cars are at some distance from the ends and from the sides, are they not?

Mr. OLHAUSEN. The chutes from the bottom of the cars?

Mr. SHEARN. Yes; the traps at the bottom of the cars?

Mr. OLHAUSEN. Well, they are in the track.

Mr. SHEARN. They are in the center of the car, are they?

Mr. OLHAUSEN. You mean the hoppers?

Mr. SHEARN. The hoppers; yes.

Mr. OLHAUSEN. Yes, yes.

Mr. SHEARN. They are at some distance from the ends and sides?

Mr. OLHAUSEN. Not in the self-dumping cars they are not; no. The self-dumping cars, they take the whole thing.

637 Mr. SHEARN. But in cars that are not self-dumping?

Mr. OLHAUSEN. Yes; a certain amount has to be shoveled then from the ends; that is due to either bituminous or anthracite.

Mr. SHEARN. The methods of unloading the two coals are the same, are they not?

Mr. OLHAUSEN. Practically; yes.

Mr. SHEARN. Now, then, in hauling anthracite coal from a given point to a given point, say from a gathering point on a railroad to the terminal, do you know whether there is any difference in the cost of hauling bituminous and anthracite?

Mr. OLAHUSEN. I do not know that there is; you roll the wheels over the road and that is about the same thing.

Mr. SHEARN. You do not know of any reason why it should be more expensive to haul one kind of coal from a given point to a given point than the other, do you?

Mr. OLAHUSEN. Not after it is gathered together; no.

638 Mr. SHEARN. Do you know of any traffic, freight traffic, that is as cheap to handle as anthracite coal?

Mr. OLAHUSEN. Well, I do not know about that. I think I testified in the other case that it was as cheap, but I am inclined to think, when I come to figure on the amount of care that is required in distributing those cars and gathering them together again and hauling empty cars over the road one way for nothing, that it costs considerable, and is not probably as cheap as hauling pig iron, the cars of which you can use in both directions.

Mr. SHEARN. Well, you have seen a light since you were a witness in the Coxe Brothers case?

Mr. OLAHUSEN. Only by experience.

Mr. SHEARN. I am not asking you about the cost of gathering coal together at the gathering point and of distributing it at the terminals; I am talking about the haul of coal from point to point.

Mr. OLHAUSEN. I have already answered that.

Mr. SHEARN. I ask you whether you know of any commodity that is as cheap to haul and to handle, aside from the matter of gathering and distributing, cheaper than anthracite?

639 Mr. OLHAUSEN. Why, no; they are the same as bituminous; you roll the cars along after you get them loaded—get them together.

Mr. SHEARN. Do you recollect being asked this question in the Coxe Brothers case: "Do you know of any material that is transported by rail that is cheaper to transport or costs less than coal?" And you answered, "No; it is about as cheap as anything."

Mr. OLHAUSEN. Probably that was right at that time.

Mr. SHEARN. What has happened since to make it different?

Mr. OLAHUSEN. I do not know that there is any difference now.

Cross-examination:

Mr. GOWEN. On the question of hauling over the railroad, it is just as cheap to haul anything as it is coal?

Mr. OLAHUSEN. No.

Mr. GOWEN. It don't make a bit of difference what the traffic is?

Mr. OLAHUSEN. No.

640 Mr. GOWEN. Is it not the fact that of late years the sizes of cars in which bituminous is moved have increased—a much larger proportion is moved in 50-ton cars than anthracite?

Mr. OLHAUSEN. That is the case with a great many railroads.

Mr. GOWEN. Is not that explained by the fact that in the case of a great many of the anthracite mines they are located on branches or spurs,

which are purely coal branches, and which are not able to carry fifty-ton cars?

Mr. OLHAUSEN. The fifty-ton cars would not go through under the chutes; therefore they have got to confine them principally to places where they can load them under chutes that are high enough.

Mr. GOWEN. And of course it costs very much less to handle and move and unload one car containing fifty tons than two cars containing twenty-five tons?

Mr. OLAHUSEN. Yes, sir; less wheeling; only eight instead of sixteen.

Mr. SHEARN. What has wheeling got to do with it?

Mr. OLAHUSEN. Eight wheels instead of sixteen.

Mr. SHEARN. What have the wheels to with unloading?

641 Mr. OLAHUSEN. I thought you said handling.

Mr. GOWEN. Handling and unloading, both.

Mr. OLAHUSEN. I meant moving when I said moving it on the wheels.

Mr. CAMPBELL. There is a little difference also in the dead wood which you are hauling—between one large car and two small ones?

Mr. OLAHUSEN. Yes, sir.

Mr. SHEARN. What is the difference of dead wood?

Mr. OLHAUSEN. A fifty-ton car will——

Mr. CAMPBELL. Dead weight, I should have said.

Mr. SHEARN. You said there was a difference in dead wood. You were answering his question——

Mr. OLAHUSEN. Yes, sir.

Mr. SHEARN. What did you understand he meant by difference in dead wood?

Mr. OLAHUSEN. I can not explain it unless you let me.

Mr. SHEARN. Why did you say, yes, sir?

Mr. OLAHUSEN. I know what he meant.

Mr. SHEARN. You are not a mind reader.

Mr. OLAHUSEN. I know just what he meant.

Mr. SHEARN. What did he mean?

642 Mr. OLHAUSEN. He meant a fifty-ton car will weigh about twenty-five tons of dead weight—two twenty-five ton cars will weigh about 30 tons of dead weight.

Mr. SHEARN. That is the distinction?

Mr. OLAHUSEN. Yes, sir.

Mr. SHEARN. Are you in the employment of the railroad companies at any time?

Mr. OLAHUSEN. No, sir.

Mr. SHEARN. Drawing a pension from the Central of New Jersey?

Mr. OLAHUSEN. Is that pertinent?

Mr. CAMPBELL. I object on behalf of the witness to his going into his private affairs.

Mr. SHEARN. I won't insist upon the question if the witness does not care to answer me.

Com't PROUTY. What is your business now?

Mr. OLAHUSEN. I have retired. I am not doing anything. I have retired on account of sickness.

Com'r PROUTY. Have you had any experience in the handling of coal for the last ten years?

Mr. OLAHUSEN. Yes, sir.

Com'r PROUTY. How recently?

Mr. OLAHUSEN. I was retired a year and a half ago.

643 Com'r PROUTY. For whom were you working before you were retired?

Mr. OLAHUSEN. Central Railroad of New Jersey.

Com'r PROUTY. Do you know anything about the actual weights of carloads of anthracite coal?

Mr. OLAHUSEN. The actual weights?

Com'r PROUTY. Yes; how heavy are cars actually loaded with anthracite coal at the present time?

Mr. OLAHUSEN. Well, from 20 to 50 tons.

Com'r PROUTY. What proportion are 20 tons and what proportion are 50 tons?

Mr. OLAHUSEN. That I could not say, but I should say about one-third or one-fourth probably are fifty-ton cars.

Com'r PROUTY. Do you know why they are not all loaded with fifty tons?

Mr. OLAHUSEN. They could not use them under the chutes of the collieries—of the breakers.

Com'r PROUTY. Bituminous coal is loaded into the cars in a different way, is it not?

Mr. OLAHUSEN. They have not got the same kind of chutes that the anthracite coal has; they don't have to prepare——

644 Com'r PROUTY. Can you load these tall cars with bituminous coal?

Mr. OLAHUSEN. Yes; as well as they can; they try to send them for bituminous as much as possible.

Com'r PROUTY. So that at the present time bituminous loads are heavier than anthracite loads in fact?

Mr. OLAHUSEN. Yes, sir; there is a greater proportion of bituminous loaded into the same number of cars than there is of anthracite.

Com'r PROUTY. More fifty-ton cars loaded with bituminous coal than with anthracite coal?

Mr. OLAHUSEN. Yes, sir.

Mr. KERR. Mr. Olhausen, in your experience do you think it would be possible to put 50 tons of freight into a twenty-ton car?

Mr. OLAHUSEN. I did not say that, did I?

Mr. KERR. I ask you if it is a possibility?

Mr. OLAHUSEN. Ordinary freight?

Mr. KERR. Or any kind of freight.

Com'r PROUTY. How much does a fifty-ton car weigh?

Mr. OLAHUSEN. I think it is about 24,000.

Com'r PROUTY. Don't it weigh 36,000 or 37,000?

645 Mr. OLAHUSEN. No; I am wrong; it is about 36,000 lbs.

Com'r PROUTY. How much does a car which holds twenty-five tons weigh?

Mr. OLAHUSEN. It seems to me that is about 24,000 or 26,000.

646 GEORGE N. WILSON, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. Mr. Wilson, you are the auditor of the Lehigh Valley Railroad Company?

Mr. WILSON. Yes, sir.

Mr. SHEARN. And of the Lehigh Valley Coal Company?

Mr. WILSON. Yes, sir.

Mr. SHEARN. You have charge of the books of account of those two companies?

Mr. WILSON. Yes, sir.

Mr. SHEARN. And are familiar with them?

Mr. WILSON. Not very.

Mr. SHEARN. That is because you have not been auditor very long?

Mr. WILSON. Yes.

Mr. SHEARN. How long have you been the auditor?

Mr. WILSON. Two weeks.

Mr. SHEARN. Who was your predecessor?

Mr. WILSON. Isaac McQuilkin.

Mr. SHEARN. Where does he live?

Mr. WILSON. I do not know.

647 Mr. SHEARN. Do you know where he is?

Mr. WILSON. I do not know.

Mr. SHEARN. Have you in the two weeks you have been auditor examined any of the books of account of the railway company?

Mr. WILSON. Some of them I have.

Mr. SHEARN. Any of the coal company?

Mr. WILSON. Some of them.

Mr. SHEARN. Do the two companies have separate sets of books of account?

Mr. WILSON. They do.

Mr. SHEARN. What are the books of account of the Lehigh Valley Railroad Company?

Mr. WILSON. They are the usual books of accounts, such as journals, ledgers, cash books, and records of various kinds.

Mr. SHEARN. Do you have a separate journal for each month, or each six months, or each year, or any given period?

Mr. WILSON. They are used continuously until exhausted.

Mr. SHEARN. Do you know in what journal the transactions
648 of the Lehigh Valley Railroad Company with the Lehigh Valley Coal Company for the period beginning January 1st, 1901, and extending down to date, would appear in?

Mr. WILSON. Does that mean a particular numbered book?

Mr. SHEARN. Yes.

Mr. WILSON. No; I could not answer that.

Mr. SHEARN. Would all of those transactions for that period appear in one book?

Mr. WILSON. I could not answer that.

Mr. SHEARN. How about the ledger for the same period?

Mr. WILSON. Same answers apply.

Mr. SHEARN. You do not know?

Mr. WILSON. I do not.

Mr. SHEARN. Have you examined the cash book of the Lehigh Valley Railroad Company covering the period January 1st, 1901, down to the present time since you have been auditor?

Mr. WILSON. I have not.

Mr. SHEARN. Have you examined the cash book at all?

Mr. WILSON. I have not.

649 Mr. SHEARN. You have not?

Mr. WILSON. I have not.

Mr. SHEARN. Have you examined the ledger?

Mr. WILSON. To some extent.

Mr. SHEARN. Have you examined the journal?

Mr. WILSON. To some extent.

Mr. SHEARN. Have you examined the cash book of the Lehigh Valley Coal Company?

Mr. WILSON. I have not.

Mr. SHEARN. Or its journal?

Mr. WILSON. No.

Mr. SHEARN. Or ledger?

Mr. WILSON. No.

Mr. SHEARN. You do not know anything about the books of the Lehigh Valley Coal Company, then, do you, at all?

Mr. WILSON. Not much; no.

Mr. SHEARN. Who is the head bookkeeper, the man in charge of *charge of* the books immediately subordinate to you?

Mr. WILSON. Ellis Y. Brown.

Mr. SHEARN. B-r-o-w-n?

Mr. WILSON. Brown; yes.

650 Mr. SHEARN. He is in Philadelphia?

Mr. WILSON. Yes, sir.

Com'r FIFER. Is he familiar with these books?

Mr. WILSON. Yes.

Com'r FIFER. He would know where these entries are and the number of the book in which these entries appear?

Mr. WILSON. I doubt if he could remember offhand exactly the number; it is easy to ascertain.

Mr. SHEARN. Sir?

Mr. WILSON. I say the number could be easily ascertained.

Mr. SHEARN. Well, is Mr. Brown familiar, to your knowledge, with the entries of these various books?

Mr. WILSON. That is his duty.

Mr. SHEARN. He knows the method of bookkeeping of these two companies?

Mr. WILSON. He should. Of the two companies.

Mr. SHEARN. Of each of the companies?

Mr. WILSON. Of the coal company only—he has nothing to do with the railroad company.

651 Mr. SHEARN. Who in the railroad company is your immediate subordinate who has charge of the bookkeeping of the Lehigh Valley Railroad Company?

Mr. WILSON. Well, I have a bookkeeper.

Mr. SHEARN. You have a good many bookkeepers, I suppose, haven't you?

Mr. WILSON. Yes.

Mr. SHEARN. Who is the head bookkeeper?

Mr. WILSON. A man by the name of Semple.

Mr. SHEARN. What is his first name?

Mr. WILSON. A. Semple, is all I know.

Mr. SHEARN. He is at your office in Philadelphia?

Mr. WILSON. Yes.

Mr. SHEARN. Does he have charge of any particular books?

Mr. WILSON. He is assigned work that requires him to use certain books.

Mr. SHEARN. What books does he work on?

Mr. WILSON. He works on what are known as the general books.

Mr. SHEARN. Well, general books; do the general books include the freight accounts—receipts from freight?

Mr. WILSON. They include the results.

652 Mr. SHEARN. Do they include the receipts of the railroad company from freight?

Mr. WILSON. They show how much the railroad company receives for freight.

Mr. SHEARN. Well, he has to do with the books that show how much the railroad company has received from freight, has he?

Mr. WILSON. Not all the books.

Mr. SHEARN. Well, who else has to do with and is familiar with the books of the Lehigh Valley Railroad Company showing what it has received for freight during the period I have mentioned?

Mr. WILSON. The freight auditor would have the details.

Mr. SHEARN. What is his name?

Mr. WILSON. W. C. Scott.

Mr. SHEARN. He is at the same office?

Mr. WILSON. He is.

Mr. SHEARN. Who would have to do with making the entries in the cashbook when cash came in for the payment of freight?

Mr. WILSON. The treasurer.

653 Mr. SHEARN. He would make the entries in the cashbook?

Mr. WILSON. Yes.

Mr. SHEARN. What is his name?

Mr. WILSON. W. C. Alderson.

Mr. SHEARN. Is he in court?

Mr. WILSON. I think not.

Mr. SHEARN. Who would have knowledge of the books of the Lehigh Valley Coal Company showing payments made by that company to the Lehigh Valley Railroad Company, for instance, for freight?

Mr. WILSON. The man that I have named, Ellis Y. Brown.

Mr. SHEARN. And who would have knowledge of the——

Mr. WILSON. You understand, when I speak of Mr. Brown as Mr. Brown under me—you have stated that he is the man that is under me in charge of this part of the work.

Mr. SHEARN. In charge of that part of the work?

Mr. WILSON. Yes, sir.

Mr. SHEARN. In other words, the books of the Lehigh Valley Coal Company containing the entries of payments, if there any are, made to the Lehigh Valley Railroad Company for freight would have been made either by Mr. Brown or under his supervision?

654 Mr. WILSON. Yes.

Mr. SHEARN. Under whose supervision would the entries in the books of the Lehigh Valley Coal Company have been made showing the amounts paid for the purchase of coal by that company?

Mr. WILSON. Under mine, and in turn under Mr. Brown's.

Mr. SHEARN. Have you made any entries during the last two weeks in the books of the Lehigh Valley Coal Company showing amounts paid for the purchase of coal by that company?

Mr. WILSON. I could not say as to that.

Mr. SHEARN. Well, you know whether you have or not, don't you?

Mr. WILSON. I have not made any entry myself.

Mr. SHEARN. Do you recollect whether any have been made under your supervision? Do you know whether any have been made?

Mr. WILSON. For purchase of coal?

Mr. SHEARN. Yes.

Mr. WILSON. I know that the coal company purchases coal—the Lehigh Valley Coal Company purchases coal.

655 Mr. SHEARN. Do you know whether there is any officer or person in the company—in the Lehigh Valley Railroad Company or in the Lehigh Valley Coal Company—especially charged with making up reports of the prices realized for the sale of coal at tide water purchased by the Lehigh Valley Coal Company?

Mr. WILSON. No; I do not.

Mr. SHEARN. Isn't there an accountant whose business it is to make a record of all sales of coal purchased by the Lehigh Valley Coal Company and sold at tide water?

Mr. WILSON. The record of the business would reflect that, of course.

Mr. SHEARN. It would reflect that?

Mr. WILSON. Yes.

Mr. SHEARN. From your knowledge of the business would you say that there is such a person who gets up such reports and makes such reports to the vendors of coal, the original miners of the coal?

Mr. WILSON. That is a feature that has not come to me yet.

Mr. SHEARN. Well, in the course of your limited experience there of two weeks, have you observed whether the payment for the coal purchased by the Lehigh Valley Coal Company made to the sellers

656 of coal, the independent miners, was made upon any percentage basis or not?

Mr. WILSON. No; I have not noticed that.

Mr. SHEARN. Well, has it come to your knowledge from instructions received from any of your superior officers as to whether the coal of the Lehigh Valley Coal Company purchased from independents was purchased from them on a percentage basis?

Mr. WILSON. I understood there was some such arrangement; I do not know what it is in detail.

Mr. SHEARN. From whom have you received that information?

Mr. WILSON. I do not remember. I think simply from employees that I found there in the department.

Mr. SHEARN. Well, was there anything in the books that you have seen in the last two weeks that indicated anything of that kind?

Mr. WILSON. No; as I said, I have gone very slightly into the books of the coal company.

Mr. SHEARN. Really haven't taken hold yet. What percentage arrangement were you informed by any officer of the company or employee of the company was in effect governing the purchase of anthracite coal by the Lehigh Valley Coal Company from independent operators?

657 Mr. GOWEN. This is in line with the theory of the case which we have discussed heretofore, and I really must object. I do not want to be objecting all the time, but I really would request the witness not to answer questions relating to the contracts or to transactions on them.

Mr. SHEARN. Do you mean, Mr. Gowen, that you intend to resist our efforts to establish whether or not the coal company purchased coal on a percentage basis?

Mr. GOWEN. Oh, yes, Mr. Shearn; I do not think that has anything to do with the inquiry.

Mr. SHEARN. You not only resist the efforts to introduce the contracts but to have the information elicited from the employees of the company.

Mr. GOWEN. If it is incident to any matters arising under those contracts or to working under them.

Mr. SHEARN. It is obvious the witness has very little knowledge on the subject.

Mr. SHEARN. Where were you employed before you became auditor of the Lehigh Valley?

Mr. WILSON. In Chicago.

Mr. SHEARN. That is all.

658 Cross-examination:

Mr. GOWEN. Mr. Wilson, since you have been connected with the Lehigh Valley Railroad Company, you have had occasion, have you not, to render bills to the Lehigh Valley Coal Company for freight on coal transported for it?

Mr. WILSON. I have.

Mr. GOWEN. How were those bills made out?

Mr. WILSON. Statement was rendered them.

Mr. GOWEN. At what rate do they charge per ton for transportation?

Mr. WILSON. I could not answer as to that. That could be replied to by the coal auditor.

Mr. GOWEN. The coal auditor would know that?

Mr. WILSON. The coal traffic auditor he is called.

Mr. GOWEN. How often are those rendered?

Mr. WILSON. Every week.

Mr. SHEARN. Do you know of any receipts of money by the railroad company from the coal company for freight during the two weeks you have been there?

Mr. WILSON. By the railroad company?

Mr. SHEARN. From the coal company.

Mr. WILSON. I could not answer positively as to that.

659 Mr. SHEARN. Well, if there were any, you would recollect them, would you not?

Mr. WILSON. I doubt it.

Mr. SHEARN. In the course of your two weeks' experience there has it come to your knowledge, from an examination of the books, as to whether the receipts for the sale of coal at tide water go in the first instance to the railroad company or the coal company?

Mr. WILSON. The coal company sells the coal and collects for it.

Mr. SHEARN. And collects for it. You have observed that from the books, haven't you?

Mr. WILSON. Yes.

Mr. SHEARN. Have you observed from the books of the coal company whether, in the returns made of the sale of coal at tide water, there was deducted the cost of selling?

Mr. WILSON. I have not observed anything in that connection.

Mr. SHEARN. Well, all you know is that certain amounts have come in as being the results of sale of coal at tide water, and you have not been able to ascertain whether it covered deductions for selling or

660 not; is that correct?

Mr. WILSON. It is.

Mr. SHEARN. Tell me this, please: Do the books of account of the Lehigh Valley Coal Company, in the case of a sale of anthracite at tide water, show the number of tons sold?

Mr. WILSON. Yes.

Mr. SHEARN. And do they show the different sizes?

Mr. WILSON. Yes.

Mr. SHEARN. And do the same books show the purchases of coal?

Mr. WILSON. Yes.

Mr. SHEARN. Do they show the time of the purchase?

Mr. WILSON. Yes.

Mr. SHEARN. And the number of tons purchased?

Mr. WILSON. Yes.

Mr. SHEARN. And the different sizes?

Mr. WILSON. Yes.

Mr. SHEARN. Does the Commission desire an adjournment? I desire to either examine this witness at considerably greater length or to examine the coal auditor, Mr. Scott——

661 Mr. GOWEN. I think it would be more satisfactory to have the auditor's.

The CHAIRMAN. It seems hardly worth while to question a witness who can give us no information.

Mr. SHEARN. I will ask this witness no further questions; but I would like to examine the head bookkeeper and the coal auditor.

I would request the Commission to instruct the witnesses who are under subpœna to attend at the next session without further notice.

The CHAIRMAN. The witnesses who have been subpœnaed to be in attendance to-day will be excused until to-morrow morning at 10.30 o'clock.

The Commission thereupon, at 4.30 p. m., adjourned to meet to-morrow, April 23rd, 1903, at 10.30 a. m.

662 NEW YORK, N. Y., *April 23, 1903—10.45.*

The CHAIRMAN. You may proceed, Mr. Shearn.

Mr. SHEARN. I will proceed a little out of the order in which I had expected to do. For the convenience of counsel, and at their request, I am now going to call upon the secretary of the Guaranty Trust Company, of New York, the trustee under the Temple Iron Company agreements.

EDGAR C. HEBBARD, a witness called on behalf of complainant, having been duly sworn, testifies as follows:

Mr. SHEARN. Mr. Hebbard, you are the secretary of the Guaranty Trust Company of New York?

Mr. HEBBARD. I am.

Mr. SHEARN. And you have the custody of the agreements, contracts, and papers entrusted to that company—the contracts as to which that company acts as trustee?

Mr. HEBBARD. I do not.

Mr. SHEARN. Is the Guaranty Trust Company of New York the trustee under any agreement with the Temple Iron Company, or with any of these respondent railway companies?

Mr. HEBBARD. They are.

663 Mr. SHEARN. As such trustee, certain contracts have been entered into between some of these respondent companies, the Temple Iron Company, and the Guaranty Trust Company?

Mr. HEBBARD. They have.

Mr. SHEARN. Who has custody of those contracts?

Mr. HEBBARD. The trust officer.

Mr. SHEARN. What is his name?

Mr. HEBBARD. Mr. Newton.

Mr. SHEARN. You have been served, have you not, to produce at this hearing all contracts entered into between the Guaranty Trust Company of New York, as trustee, the Temple Iron Company, the Lehigh Valley Railroad Company, the Central Railroad of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railway Company, the New York, Susquehanna & Western Railroad Company, the Philadelphia and Reading, and the Reading Company since January 1st, 1899?

Mr. HEBBARD. I have.

Mr. SHEARN. There are such contracts, are there not?

Mr. HEBBARD. There are.

664 Mr. SHEARN. Have you brought them to court?

Mr. HEBBARD. I have.

Mr. SHEARN. They are now in your custody in court?

Mr. HEBBARD. They are.

Mr. SHEARN. Are you familiar with the terms of the contract?

Mr. HEBBARD. I am not.

Mr. CAMPBELL. I object.

Mr. SHEARN. Please produce a contract dated April 10, 1899, between the Guaranty Trust Company of New York, of the first part, and the Erie Railway, party of the second part, appertaining to the guarantee of the stocks and bonds of the Temple Iron Company.

Mr. CAMPBELL. I object, if your honors please.

Com'r PROUTY. He has testified that he had certain contracts. Has he that one?

Mr. SHEARN. Have you a contract dated the 10th day of April, 1899, between the Guaranty Trust Company of New York and the Erie Railway Company?

Mr. HEBBARD. I have.

Mr. SHEARN. Relative to the guarantee of the stock and bonds of the Temple Iron Company?

Mr. HEBBARD. I do not know the contents. I only know the title.

665 Mr. SHEARN. And you have that contract in court?

Mr. HEBBARD. Yes, sir.

Mr. SHEARN. Please produce it.

Mr. CAMPBELL. I object, if your honors please. So far as the Erie Railway Company is concerned, I have no voice, and have no right to present the question, but inasmuch as it is obvious from what has preceded in the statement of counsel, parties for whom I am concerned are interested in the production of these papers.

Mr. SHEARN. May I interrupt you here? I will ask about the other contract, and then let the objections be stated. Have you a contract dated April 10, 1899, between the Guaranty Trust Company of New York, and the Lehigh Valley Railroad Company?

Mr. HEBBARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York and the Central Railroad Company of New Jersey?

Mr. HEBBARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York, and the Delaware, Lackawanna & Western Railroad Company?

Mr. HEBBARD. I have.

666 Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York and the New York, Susquehanna & Western Railroad Company?

Mr. HEBBARD. I have.

Mr. SHEARN. And another contract dated the same day between the Guaranty Trust Company of New York and the Reading Company?

Mr. HEBBARD. I have.

Mr. SHEARN. And a contract dated the 27th day of February, 1899, between Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pa., described as vendors in the contract, and the Guaranty Trust Company of New York, described as trustee, party of the second part?

Mr. HEBBARD. I have.

Mr. SHEARN. Have you produced an agreement known as the underwriting agreement executed by John D. Rockefeller, J. Pierpont Morgan, James Stillman, and others, referring to these same guarantees.

Mr. HEBBARD. I have not.

Mr. SHEARN. Please produce the contracts I have called for.

667 Mr. CAMPBELL. I object.

Mr. ROSS. I object on behalf of the Delaware, Lackawanna & Western.

The CHAIRMAN. Mr. Shearn, please state on what grounds you claim these contracts are admissible.

Mr. SHEARN. The third branch of this case relates to the combination between these coal carrying companies, whereby it is charged they control the output and control the prices, and, by means of the control of the output and control of the prices, pool the freight business and the proceeds of the business.

Mr. BROWNELL. Please read the provision of the petition on which you rely as charging that.

Mr. SHEARN. I won't read them, but——

Mr. BROWNELL. I will read them later, then.

Mr. SHEARN. They are on the third or fourth folio of the second page.

Com'r PROUTY. They were read yesterday.

Mr. SHEARN. Yesterday or the day before. Now, then, the respondent companies all deny that there is any combination, concert, or understanding between them of any sort, shape or description. These
668 contracts will show that in 1899 the firm of Simpson & Watkins, operating in the Lackawanna regions and owning some eleven collieries, entered into an agreement with the Guaranty Trust Company of New York, whereby they were turned over to a corporation called the Temple Iron Company, a Pennsylvania corporation operating a small iron furnace at Reading, Pa. They were to turn over all of their various collieries in return for $2,250,000 of the stock of the company and $2,100,000 of the bonds of the Temple Iron Company, and that then once having received the stock and the bonds provided for, they should surrender back to the trustee the stock and bonds, receiving in return for it $3,238,396 cash and certificate of a beneficial interest in the Temple Iron Company to the extent of $1,000,000.

Just prior to entering into this agreement Mr. Baer, the president of the Philadelphia & Reading Railway Company, and other companies that we know of, bought the charter of the Temple Iron Company. At that time the Temple Iron Company was nothing but a small iron furnace at Reading, Pa., in no way interested in the coal business, save for the small supply of coal that it from time to time bought for its business, and infinitesimally small amount as compared with the output of the eleven great collieries of Simpson & Watkins. It is difficult to understand at first what interest Mr. Baer had in obtaining the charter
669 of this little iron company, and it is difficult at the outset to understand why he as president of the Philadelphia & Reading was interested in the transfer of the mine of Simpson & Watkins to the Temple Iron Company, because those mines were not reached by the Reading system directly; but when we look a little further below the surface, we find—without reviewing it in detail, for I referred to it in my opening—we find Simpson & Watkins engaged actively and influentially in an attempt to build an independent line to tide water, which attempt, if successful, would have resulted in competition in the coal business, and the stock and bonds of the Temple Iron Company were used to purchase these eleven collieries of Simpson & Watkins, and thus disrupt this attempt to build a competing line to tide water. It was not only attempted to be carried out, but was successfully carried out, because when Simpson & Watkins were removed from the field, the movement at once became a failure and nothing further was heard of it.

Now, it was not Mr. Baer alone who was doing this, and if it had been it would not be quite as significant; but it was Mr. Baer's railroad, Mr. Baer's holding company, as described by Judge Campbell yesterday, the Reading Company, Mr. Thomas's company, the Lehigh Valley, the Delaware, Lackawanna & Western, the Central Railroad Com-
670 pany, New Jersey, the New York, Susquehanna & Western, and the Erie Railroad Company, all interested in this venture.

Now, how were they interested in it, and why were they interested in it, and what do their acts in this relation prove? Why, the Temple Iron Company stock and the Temple Iron Company's bonds were worthless. Those $5,000,000 of stock and bonds put out at this time didn't have but $160,000 back of it. It was absolutely good for nothing, and if these supposedly competing companies had not gotten together and lent their credit to those bonds and stocks, the transaction would have been impossible. What did they do, and what will these agreements show that they did—all executed by them? They will show that they came in and on a percentage basis, which percentage basis agrees with the amount of tonnage carried by these respective railroads during that year, and some years previous thereto, guaranteed dividends of 6% on the stock of the Temple Iron Company, and guaranteed the payment of the principal and interest on the bond of the Temple Iron Company.

Com'r PROUTY. That is, the railroad companies?

Mr. SHEARN. These six railroad companies did that. Now, observe the situation. Those contracts were all dated the same day, all executed the same day, all identical in terms, with the exception of the dif-
671 ferent percentages. Those six contracts taken together, executed by these six companies with the Guaranty Trust Company of New York, show conclusively and undeniably that these six railway companies have combined, have concerted together for some purpose. They can never truthfully deny that there is an understanding or concert or agreement between them, when these contracts are once examined, because they are all identical in terms, and made for this purpose. What was this concert about? What was it for? What was the purpose of it? Did it have anything to do with the coal business? We have seen that it did. The only object of it was to wipe out the independent line to tide water, and the stock and bonds designed for it, and used for it, and used successfully. Suppose these contracts contained such a provision as this, and you will get a further idea as to why these contracts are important; suppose that one of the contracts contain a clause as follows:

"If the railway company shall neglect, omit, or refuse to pay to the trust company a sum equal to 12½ cents upon and in respect of every ton of coal from the mines of the Temple Iron Company acquired under the terms of the agreement between Simpson & Watkins and the iron company, dated the 27th of February, 1899, and any additional mines here-
after acquired by the iron company in conformity with the
672 agreement of the same date between said iron company, the trust company, and the railway company, transported over the line of the railway company as the initial line, or any other sum it is liable to pay under the agreement of February 27th, A. D. 1899, after the same has been demanded by the trust company, then in addition to the remedies

provided in this agreement the trust company may notify and require the Temple Iron Company thereunder to ship its coal over the lines of such of the guarantors as have not made default."

Mr. PROUTY. I was about to ask you whether the collieries were tributary to more than one of these lines.

Mr. SHEARN. Yes, sir; they are tributary to four of them.

Mr. CAMPBELL. They are not tributary to all of these lines. You do not mean to have this Commission understand that all these collieries are tributary to all these railroads.

Mr. SHEARN. That is what makes it all the more remarkable, why the Reading was interested in this transaction when their lines did not reach these mines. What was the interest of the Reading Com-
673 pany coming in and guaranteeing the interest on the Temple Iron Company's bonds in a matter referring to mines that they did not reach?

Com'r FIFER. How many mines were there?

Mr. SHEARN. Eleven collieries, with a tonnage of over a million tons a year. [Continuing the reading of paragraph:] "Any contract or agreement between the railway company and the companies owned or controlled by the Temple Iron Company to the contrary notwithstanding. Such shipments over lines not in default may be permanent, or so long as such default continues as the trust company shall from time to time determine."

Now, then, here were those collieries, and supposing that they had entered into—before this contract was made—into valid contracts for the transportation of coal with any of these railroad companies, and suppose the economical transportation of their coal demanded that they should use some particular line with which they made a contract; why, under these contracts if that railroad company violated any of the provisions of this trust agreement, that colliery by virtue of these contracts and by
674 virtue of the control over it of the directors of these six railroad companies would be compelled to transfer this coal to some other railroad company, which perhaps would cost a great deal more to transport over, which would not be anything like as economical or which would not be as convenient; but it had no say about it.

It is a mere dumb instrument. If any of these six railroad companies violated any provision of that agreement these collieries must be penalized by having their traffic transferred to some other railroad as a punishment to the offending company. When you consider that the companies who guaranteed this agreement—that two of them, say, Mr. Baer's and those of Mr. Thomas together—control 89 per cent of the entire coal supply, and together—just the companies controlled by those two—something like 76 per cent of all the coal that is carried, observe the effect of having them banded together by an iron-clad agreement like this, whereby mines located in different sections not tributary to some of the roads, but tributary to four or five of these supposedly competing roads are placed in the hands of a common management. Who are the managers and directors and officers of the Temple Iron Company? Mr. George F. Baer is president. The directors are Mr. George F. Baer, president of Philadelphia & Reading, and Central Railroad Com-
675 pany of New Jersey; Mr. Eben B. Thomas, president of the Lehigh Valley Railroad Company and chairman of the board of

directors of the Erie Railway; Mr. F. D. Underwood, president of the Erie Railroad Company; Mr. W. H. Truesdale, president of the Delaware, Lackawanna & Western Railway Company, and some months ago, when this proceeding was first instituted, Mr. R. M. Olyphant, president of the Delaware & Hudson Company.

Mr. CARR. At that time Mr. Olyphant was not a member of the board of directors. That was not an exact statement.

Mr. SHEARN. He was at one time a director of the Temple Iron Company and for reasons which he knows better than anyone else he has withdrawn from the directorate. Mr. Thomas P. Fuller, president of the New York, Ontario & Western, and Mr. I. A. Stearn, of the Delaware, Susquehanna & Schuylkill, a road owned by the Coxe Brothers, which operates from their mines to a connection with the Lehigh Valley. There is this company owning these collieries directed by the presidents of these supposedly competing railway companies. It does not even stop there. The Temple Iron Company is not conducted as an ordinary corporation is, issuing shares of stock for investment, but all the
676 stock of the Temple Iron Company is held by the Guaranty Trust Company of New York as trustee under these agreements and voted by the Guaranty Trust Company of New York as the presidents of these supposedly competing railroads dictate, and the Guaranty Trust Company of New York issues certificates of beneficial interest in the shares of the Temple Iron Company. That is what the investor gets who buys an interest in the Temple Iron Company. Instead of getting some stock that he can vote, and thus instead of making it possible for anyone to come in and get control of these mines by purchase of the stock, he is limited to the purchase of a certificate of a beneficial interest in the Temple Iron Company, which is voted by the agents of these supposedly competing railroads.

If that evidence is not significant and important and relevant and material on this question of combination, on the question appertaining to the pooling issue in this case, I do not know how anything is pertinent.

Commissioner CLEMENTS. Do you say these contracts will show those facts?

Mr. SHEARN. Yes, sir; they will show all those facts. Their production is challenged. The Guaranty Trust Company will refuse
677 to produce them and these railroad companies will say to you that you shall not examine or look at the two great features of evidence which would establish every material allegation in our petition. The coal-purchase contract which they have defied you to compel them to produce would prove absolutely our claim of discrimination and would be most relevant and important evidence on the question of reasonable rates. The Temple Iron Company contract will satisfy any reasonable man beyond peradventure that these railroad companies controlling nearly ninety per cent of the supply of coal and controlling more than ninety per cent of the carriage of coal, are banded together under a hard-and-fast agreement for a purpose, which we can show, was the stifling of competition, accomplished by dividing the stock and bonds guaranteed by them to purchase the colleries of Simpson & Watkins, and I hope that the Commission will insist that this evidence shall be received.

Mr. CAMPBELL. May it please your honors, representing parties to this contract, we object that our custodian shall deliver up and produce

at this hearing private documents relating to our private business, and we demand that our trustee and custodian shall preserve the con-
678 fidence that was preserved in it when the deposits were made. I am justified in making that objection because the contracts are not material to be considered here in respect to any question pending before this Commission. The papers are shown to be res inter alios acta; strictly so-called disinterested third parties are named who are not before this court and cannot be. Their private interests are affected and we demand that our custodian shall preserve our confidence.

I ought, perhaps, to rest on this technical objection, but it is due to your honors, after this extravagant statement, that you should be put in possession of some rational, consistent description of the situation that is wholly in conformity with principles of law, justice, and private rights. Mr. Stenographer, will you be good enough to state here this objection? The contracts in question are shown to relate wholly to the purchase and sale of lands and tenements within the Commonwealth of Pennsylvania by persons competent under the laws of Pennsylvania to contract for the purchase and sale of the property and may not be assailed here.

Com'r. PROUTY. Is any question made that this coal when mined is intended for interstate transportation?

679 Mr. CAMPBELL. It is not necessarily, and in its dealings it is not interstate commerce at all. I will, if your honors please, in an orderly way, arrive at that, and if I fail to follow what is in your mind in respect to this or any other point, I will be indebted to the Commission if the matter shall be called to my attention. I do not want your minds poisoned by the multitudinous misstatements which have been made, and when I charge counsel with misstatements I desire to say that I, of course, know and have no doubt that he makes them in good faith, and I do not want him to think the remark is made in any offensive way whatever.

A great many of the matters that I may incidentally refer to are perhaps trivial, but I might just as well consider them, in view of the declamations which have been made here on account of Mr. Baer's connection with this transaction, namely, that Mr. Baer is president of the Reading System, and that they have no concern in this matter because they have no access to these mines. Well, that may be true, but it happens that at the time of these transactions, and for many years before, Mr. George F. Baer was one of the most distinguished counsel related to many important business transactions in eastern Pennsylvania and in New York, and he simply appeared at that time as counsel for
680 gentlemen in interest. That explains his connection to an honest man as being consistent with an honest purpose. Of course, counsel may draw any conclusion he pleases. We do not know what. The Reading Company, in its connection with the railroads composing the Reading System, has no immediate connection with this matter, but it is an investing company. It has invested its money in this transaction simply because the business to be done by the Temple Iron Company was supposed to be and intended to be a profitable one, on which it could earn a liberal rate of interest on its money, and it was a fact justified by experience. That is the explanation of the presence of the Reading with the transaction. The Philadelphia and Reading, the transporting company carrying coal from these regions, has nothing whatever to do with it in any

shape, manner, or form. An attack has been made upon the Temple Iron Company and its origin. It was not as vast as the Northern Securities, of course, but it was a most prosperous furnace property in Pennsylvania making pig iron. Mr. Baer's connection was as one of the principal owners of the stock of that corporation, and for the purposes of its business it was a charter that was sought. Simpson & Watkins desired
681 to sell their interest in these collieries. Gentlemen interested in the matter of mining, selling, and transporting anthracite coal to market desired to buy the mines from Simpson & Watkins. The most honest and the most natural thing for gentlemen to do, under such circumstances would be, would it not, to find a charter of a corporation organized under the laws of Pennsylvania capable of acquiring the property and conducting this business in perpetuity? The Temple Iron Company had such a charter. It was paid for and paid for in good honest money. That accounts for the presence of the Temple Iron Company and its connection with this transaction. A sale was effected to the Temple Iron Company. It had a right to buy and pay for this property.

682 Those rights, together with the property held by the Temple Iron Company, were the subject-matter upon which this purchase price was based, and the whole estate of Simpson & Watkins meant to save millions of dollars instead of the insignificant item that the gentleman has undertaken to minimize was the subject-matter of this transaction. Now, these people did not propose to pay into the hands of Simpson & Watkins the entire amount of this purchase money, and, like a great many people who buy more property than they can immediately pay for, an arrangement had to be made in accordance with the usual and ordinary course of business to secure the deferred payments. Now, let us see the physical situation. For many years, as the gentleman says quite truthfully, Simpson & Watkins had been engaged in mining and selling and shipping anthracite coal. It happened that their collieries were located in a certain way. The physical geography of the situation made it so that for many years the shipments of coal went away from the mines on these several lines of railroads with which they were connected.
683 Some of the collieries were connected with one railroad, some with another; some of them, perhaps, with more than one. But in the usual and ordinary and natural course of business the shipments were made by Simpson & Watkins in certain definite proportions; that is to say, the mine that was on the Lehigh Valley Road would produce so much; that coal went to the Lehigh Valley; it was an element in determining this proportion that the gentleman makes such a time about, and so on through the entire transaction. Now, then, the Temple Iron Company having become successors of Simpson & Watkins, and finding it necessary to raise the money to complete this vast purchase of property, went to some place or other to endorse their credit. Where did they go? Why, naturally and directly to the people with whom they had been for many years engaged in business. They called upon these transporting companies, who are competent to act under their charters in these matters, to lend them their credit so that the funds could be raised and the purchase money paid. Now, if this had been a new transaction we would have seen none of these papers; there would have been no necessity for a trust agreement. But, as the money had to be

borrowed, the people who advanced the money had to be secured,
684 and these are simply the ordinary, regular, and usual forms of securing money on property of that character. I have done it many times with corporations who are alone and not associated with anybody else.

The CHAIRMAN. Was there a mortgage issued on property?

Mr. CAMPBELL. Yes, sir; part of this purchase money was paid in cash, part of it paid in bonds, and part by stock. The stock was issued to Simpson & Watkins in part for the syndicate, but it ultimately went in the market, and it is almost entirely, I may say, with the exception of the few shares that the Reading Company owns and which is entirely disconnected with its other business, in the hands of private parties. I suppose there are two million and a half, say, for instance, of capital stock. Out of that I suppose there is considerably more—I am sure there is considerably more than two millions of that stock in the hands of the public. I think there are hundreds of stockholders scattered all over New England, investing companies, insurance companies, etc., etc. It is true that that holding is represented, as the gentleman describes it, by certificates of interest, and this trustee is supposed to hold the stock
685 not for the benefit of Simpson & Watkins or the Temple Iron Company, but for the protection and security of the holders who have put their money in this stock.

The CHAIRMAN. The value of the stock depends——

Mr. CAMPBELL. The value of the stock depends upon the ability of the Temple Iron Company to earn and pay its dividends at the guaranteed rate. That is a demonstrated fact. There is no difficulty about that, but the public did not know that in advance, as you can quite understand, as occurs in respect of any new security that is utterly unknown; but to give it credit on the market, so that it might be sold, these various corporations whose names are mentioned here were asked to be the guarantee, and their guarantee was in the proportion that had been determined by the lines of trade which covered the shipments of Simpson & Watkins for a generation over these lines of road.

The CHAIRMAN. Those papers must have all been made public at that time or the stock would not have been sold.

Mr. CAMPBELL. Yes; they were. This is a question of prin-
686 ciple we are discussing. There would not be the slightest objection to your honors seeing every word of them all at any time, but officially we do not desire you to regard them.

Mr. DAVIES. Inasmuch as it appears by the statement of the counsel for the petitioner that these contracts relate solely to the security and the endorsing of the security in these various bonds, and that the relations of the Guaranty Trust Company is that of a trustee to these properties, and that the various parties in interest have objected, the Guaranty Trust Company is constrained, with all due respect to this honorable Commission, to object to the production of these various contracts upon the statement of counsel for the petitioner and upon the following grounds:

That the contracts called for do not relate to the matters under investigation in this proceeding, nor to any matter which this Interstate Commerce Commission is entitled under the Constitution or laws of the United States to investigate.

Second. That the documents therein called for are contracts made by said Guaranty Trust Company with certain third parties who are not parties to this proceeding, and other contracts made by said trust
687 company which is not a party to this proceeding with some of the parties to this proceeding, but that the subject-matter of none of said contracts relates to matters which this Commission is entitled under the Constitution or laws of the United States to investigate.

Third. That it appears on the face of said subpœna that the documents therein called for have no relation to the matters now under investigation, and that this Commission does not possess and can not be invested with power to make inquiry into the private affairs of the said Guaranty Trust Company.

Fourth. That this Commission has no power under the Constitution or laws of the United States to require said Guaranty Trust Company, which is not a corporation subject to the act to regulate interstate commerce, being the act of February 11, 1893, chapter 83, and various acts amendatory thereof and supplemental thereto, to produce the several documents described in said subpœna and called for, and that said trust company is not legally bound to produce them.

Fifth. That said contracts are irrelevant, immaterial, and incompetent with respect to the particular matters under investigation in
688 this proceeding, and that no sufficient foundation for their introduction in evidence has been laid.

Mr. SHEARN. Well, I think you ought to withdraw that last objection, Mr. Davies, because it is at your own request that I called for them this morning so as to accomodate you and your client; I did not intend to call for them until next week. It seems to me it is unfair to press that objection.

Mr. DAVIES. Well, I will press the objection that they are irrelevant, immaterial, and incompetent, and ask to reserve the objection with respect to the proper foundation being laid, because I very much question whether the counsel for the petitioner will be able to lay any foundation which will justify this Commission in admitting those contracts in evidence on the counsel's own statement. They relate solely to certain securities. It is not claimed at all that the Guaranty Trust Company is engaged in the mining or shipping of anthracite coal. I do not suppose Mr. Shearn will claim that. It is solely as trustee with respect to certain instruments and with respect to the endorsing of the security for
689 the benefit of the various holders of the security, and I may add that I will also object on the several grounds stated by Judge Campbell, so as to have the record in proper shape.

Mr. CAMPBELL. If your honor please, I want to apologize to this Commission for neglecting to answer the inquiry of the chairman, which I am very glad he made, as to whether or not this coal went into what traffic came under the act to regulate commerce. I said incidentally yes and again no. The fact is that a large portion of this coal is shipped locally. There is no telling where it goes. And another fact, which of course is not pertinent to this question, but which is pertinent to the understanding of the situation by the Commission, is that all the coal produced by the Temple Iron Company is sold on the ground to purchasers in Pennsylvania. I don't know where it goes, except that we

have the moral insight into the fact that a portion of it does come in the course of trade to tide, and after it is shipped and en route it then becomes wholly subject to the act to regulate commerce. Does that answer your inquiry?

The CHAIRMAN. These collieries now are operated by the Temple Iron Company?

690 Mr. CAMPBELL. Well, technically, we may say yes, but, as a matter of fact, no. The ownership and holding of Simpson & Watkins in those various collieries was to a great extent, if not wholly—I am not familiar with all the details on the ground—they were held almost wholly, if not wholly, by various subsidiary corporations; each colliery or set of collieries had a corporation. I cannot give you the names of all of them; I am not familiar with them; these gentlemen who carried coal will tell you better than I can the names of the various collieries; but they were held by four or five different subsidiary corporations.

Com'r CLEMENTS. These collieries are still operated by some other person than the holding company?

Mr. CAMPBELL. Oh, yes; independent.

The CHAIRMAN. And the coal is sold at the colliery?

Mr. CAMPBELL. Yes; sold at the colliery.

Com'r CLEMENTS. Doubtless some of it goes beyond the State of Pennsylvania.

Mr. CAMPBELL. Now, you will just have to leave it that way, Mr. Commissioner, at present; there is some doubt.

691 The CHAIRMAN. Is there any question that it would go to tide——

Mr. CAMPBELL. Between you and me that some of it would go to tide?

The CHAIRMAN. Yes.

Mr. CAMPBELL. Not the slightest.

Com'r CLEMENTS. As I understand it, it is alleged that these contracts provide for a percentage?

Mr. CAMPBELL. Not, except in the sense, your honor, which I described in my statement, and I undertook to go over that very deliberately and very fully. As a matter of fact, these collieries are so located on these various lines of railroad that the production which continually and habitually has gone over them for a quarter of a century, their lines attain a given percentage of the entire product. Now, then, when calling upon these people to lend them their credit they naturally, of course, confine their obligation to the proportion of the traffic that they have been accustomed to enjoy. In that way this term "percentage" is introduced and becomes *and becomes* an integral factor of the situation, but it is not——

692 Com'r CLEMENTS. But Mr. Shearn says that you guaranty not in proportion to the quantity of this coal that you have transported, but in proportion to the percentage of all the coal which is put out.

Mr. CAMPBELL. No; I think not. I must confess, your honor, that although I have been counsel connected with these things all the time and ought to know all about it, I never have been very familiar with

this situation, but I do know that the entire thing is wholly illegal and wholly inconsistent with a perfectly honest purpose. I do not know that I can give you that explanation. I would if I could. I will look into it later, and if I find it interesting I will be glad to. I do not know what that relation of the guaranty to the Reading Company is. I do know that the Reading Company has a comparatively small interest, and which interest is simply an investment of a certain number of shares. I think, possibly, that some of the gentlemen, if this gets before the Commission in the regular way, who know more about the transaction than either Mr. Shearn or I, ought to be called to explain it.

693 The CHAIRMAN. As I understand you, Mr. Campbell, the situation is this: The collieries owned by Simpson & Watkins were 11 in number, scattered over a territory in the anthracite region, some collieries being reached by one line of railroad and some by another line of railroad——

Mr. CAMPBELL. And possibly some by more than one.

The CHAIRMAN. Now, you say that in the operation of those collieries while they have control of Simpson & Watkins—as a matter of fact, you state the output of the entire group to be divided between the carriers from that territory in certain proportions, and it was those proportions, as a result of that, which fixed the share which each carrier gave—for the purpose of securing those who actually loaned their money; and you say that the presence of the Reading Company in that arrangement is accounted for by the fact that some of these secureties——

Mr. GOWEN. If the Commissioner please, I think Mr. Clements was in error when he said that Mr. Shearn claimed that this contract provided for the shipment of this coal in certain agreed percentages.

694 Mr. SHEARN. No; I said guarantees of the percentages which corresponded with the tonnage of the roads.

If the Commission please, I was much struck by the temperate and accurate description of this Temple Iron Company matter by Judge Campbell; and I was also struck with the difference between that description and that contained in the answer of the Temple Iron Company, sworn to before him and submitted to Attorney-General Cuneen. I had always understood the facts to be as he has stated them to you, though I differed with him in the legal conclusion to be drawn therefrom and the objects of the companies entering into these contracts; but in the answer of the Temple Iron Company before Attorney-General Cuneen denying all the allegations and inferences contained in the application relating to the methods and circumstances under which it acquired the interest in the said above-mentioned anthracite coal companies, it goes on to say that "the truth is that having determined to take measures to secure to itself a permanent supply of coal by acquiring an interest in said several coal companies, it called upon the said railroad com-

695 panies mentioned to aid it with their credit to enable it to raise the necessary funds for said purpose, the mines of the said railroad companies being located upon the lines of the several railroads, the said railroad companies being specifically authorized so to do by the laws of the State of Pennsylvania * * * to the end that they might severally continue to secure to themselves the traffic derived from the several operations of said several companies in like manner as they had

enjoyed the same theretofore." Now that purpose of course is effectually disposed of by the statement Judge Campbell has made, he having stated here that the object of the transaction was a legitimate and profitable investment of these railroad companies in these collieries, and that the Reading Company, for instance, looked around about it and saw there was here a chance to make a profitable investment and it did invest in the stocks and bonds of the Temple Iron Company, and although the answer of the Temple Iron Company says it was to secure to the various grantors the traffic derived from the operations of the——

Mr. CAMPBELL. They were induced——

696 Mr. SHEARN. The Reading Company, of course, having no traffic from any of these mines, they could not have been the controlling and moving impulse of it. When you would look for the controlling and real impulse behind all these matters, you will see that it was not to either the matter of profitable investment for these different railroad companies or the securing of a supply of coal to the Temple Iron Company—this supply of coal would have lasted until Kingdom Come, over a million tons a year, for this little furnace that was running with $200,000 stock; it has just a little stack; the idea of this Temple Iron Company reaching out for a supply of coal of a million tons a year to run its colliery and that that was in truth the sole impulse behind all this remarkable transaction is amusing, to say the least.

The CHAIRMAN. What do you claim the extent of the guaranty of the Reading Company was?

Mr. SHEARN. Why, the guaranty of the Reading Company was 29.96 per cent; that is the largest guaranty of them all, and if you will take the trouble to have one of your statisticians see how much coal was carried by the railroad companies in that year, the Philadelphia &

697 Reading Company, and these other companies, and figure up these percentages, you will see they correspond to the total tonnage carried by all six of these railroad companies during that and the year immediatelely preceding.

Mr. GOWEN. What year was it?

Mr. SHEARN. 1899.

Mr. GOWEN. Haven't you put in a paper of percentages showing the proportions carried by the different companies?

Mr. SHEARN. Which is since that time.

Mr. CAMPBELL. Of the whole output?

Mr. SHEARN. Yes.

Mr. GOWEN. If you will refer to that, you will find that the Reading percentage in 1899 was 20.15.

Mr. CAMPBELL. If you will refer to the statistics of actual tonnage you will find it shows a good deal less than that.

Mr. SHEARN. If the gentleman is relying upon that statement of 20.15, which I think is accurate, he will find that is based upon the records of his company and the other companies to the Commission for a year stated. Now the amount of coal carried by the Phila-

698 delphia & Reading Railroad Company for a year or two immediately preceding the entering into these guarantees as compared with the total coal carried will comport very strikingly with the percentage agreed upon here; so with the Lehigh Valley and

the Central Railroad of New Jersey and these others, and it may not be that that is the real secret of it. It simply suggests a reason. I do not know that those percentages mean that they are based upon the amount of coal that they were carrying at that time; there may have been something else in it; it may be they have gotten together and decided that for the future, although they had been in the past carrying according to the percentages shown in our totals, that they would divide the allotment in these proportions among themselves, these six companies, for the future, and that the percentages of guaranty relate to that division of tonnage, but they can explain that as they see fit. The purport of it all and the importance of it all, however, is in its legal effect. What does this show? It shows a combination. Now, the Commission asked whether the railroad companies were operating these coal companies and they say "No, it is done by the Temple Iron Company." Well, just so.

699 Applying it to the Northern Pacific case, the court will look behind a mere corporate entity like that and see who is doing the operating. The mere fact that they have created an artificial person here to hold the stock of these companies, it does not follow from that that that artificial entity that had been created is manipulating and operating those collieries—not at all. The persons who are managing those collieries are the persons who have the right to control the operations of the Temple Iron Company. They are the men who vote the stock. Now, in the opinion of the North Securities case, the court said it would look back of the mere form and look back of the mere corporate entity and see who is back of all this; and in the Northern Securities case they found Mr. Hill and Mr. Morgan back of it; they found two competing railroads back of it, and they threw aside this ficticious New Jersey charter, and found the facts as they were. Now, they also said something in that case which is very important in this connection, that men are presumed—it was somewhat old—but men are presumed to intend the legal consequences and the natural consequences of their own acts and of conditions that they create. What can be expected; what is the natural intent? The only outcome to look for when you find the presi-

700 dents of these subsidiary competing railroad companies banded together in one corporation, acting as its directors and directing the control of collieries in regions reached by competing railroad companies—can it be expected that there is any purpose in it except to harmonize the situation, except to secure a joint and concerted control over the situation? That is the only thing to look for, and when we put this before you, when they get before you, it will be your privilege to say what the objection of this transaction was, what its legal effect is. They say this is private business, it is private business, these contracts for the transportation of coal are private business, this matter of gathering together 11 collieries in those regions up there and putting them under the control of competing railway companies is private business. That is just where they make a mistake. It is public business. It has been recognized in the courts as being public business. The mining of the coal is not private business. The business these railroads are engaged in is not private business. This is all public business, something the public has a right to know about, and something that your Commission was organized to inquire into.

701 When you find, as you will, that the board of directors of this Temple Iron Company, composed of the presidents of these railroad companies, meets here in the office of the Central Railroad Company of New Jersey, as it did every Tuesday during the strike, and as it does year in and year out, the conferences—the meetings—occupying hours at a time, do you suppose that they can convince you that the business they are engaged in is not the management of the collieries of the Temple Iron Company? In one breath they say they are not managing it, that they are operated by the Temple Iron Company, but at the next moment we find unusually frequent and unusually protracted meetings of the so-called directors of the Temple Iron Company. It is nothing but a guise, nothing but a sham, nothing but a device whereby the presidents of these railroad companies can get together, and, as was admitted in the answer of the Philadelphia & Reading Railway Company before Attorney-General Davies, to exchange statistical data; he said "We do meet, we do have these conferences; we get together, but merely for the purpose of exchanging statistical data." We all know what that means; we all know what kind of statistical data the presidents of these railroads are interested

702 in exchanging. They are interested in knowing "how much coal had we better put out for next month; how much had we better charge for it," and what an admirable opportunity, the board of directors' room of the Temple Iron Company, for the presidents of these railroad companies that control the entire supply and the entire carriage of coal, to get together and fix the price, fix the output. Are you going to shut your eyes to evidence of that sort on the simple claim made here that this is private business, when you know that the courts have held that it is public business; it is business impressed with a public use. The counsel says, very truthfully, that if this had been a cash transaction you would never have known anything about this; it is true; it was not, and fortunately it was not; we stumbled upon it in our investigations, and we have it and we have the contracts here in court. Are you going to have them or are you not? I ask you to direct the witness to produce the contracts. I ask you not to shut your eyes to a piece of evidence which is vital in this case.

Mr. BROWNELL. On behalf of the companies I represent I wish to enter an objection to the reception of these contracts on the same

703 grounds stated by Judge Campbell and Mr. Davies. It seems to me at this time we should reach some understanding of the issues that are being tried here. I had supposed from the allegations of the petition and from our understanding of the *the* jurisdiction of the Commission in these matters that there were three questions under consideration: First, whether or not the rates charged for the transportation of anthracite coal are unreasonable; secondly, whether or not those rates as charged as shown by the published rates are charged uniformly or whether there are other rates given as preferential rates and rates that discriminated in favor of other parties. It is also claimed in the petition that in violation of the 5th section of the interstate commerce act the respondent companies by means of maintaining common freight rates and dividing the tonnage of anthracite coal to be transported over the lines of the defendants the aggregate or net proceeds of the earnings of the defendants have been pooled and divided among the defendants in violation of the 5th section of

the act to regulate commerce. These, I take it, are the only matters at issue here before the Commission. Now, the learned counsel for the com-
704 plainant has appeared before the attorney-general of the State of New York upon two occasions, and made almost verbatim the same statements that have been made to you here in support of the contention that the respondent companies were violating the provisions of the Donnelly antitrust law of the State of New York. These companies that I represent were perfectly willing, and are willing at all times, to meet those charges or the charges that may be made by him or anybody else as to the violation of any law, either Federal or State, at the proper time and at the proper place. The same counsel, representing the same complainant, has appeared before the district attorney, the Federal district attorney, and has made almost verbatim the same statements that have been presented here as charges that the respondent companies were violating the provisions of the Sherman law and the various other Federal statutes which he claimed were being violated.

Now he has come before this Commission with a petition which alleges the violation of certain of the provisions of the interstate commerce law and has requested you to investigate those complaints. We have made answer to those. Upon that, however, charges are now made that these companies have been violating the antitrust law, the New York
705 State law in various ways, the law of Pennsylvania, which makes it unlawful for railroad companies to own the stock of a company organized for the purchase of coal, or the law of Pennsylvania, which he claims makes it unlawful for railroad companies to own land outside of their railroad land in Pennsylvania. Now, it is quite conceivable that it might be claimed that there are many laws of State and nation, and that when made the respondent might meet at the proper time and place. But I submit that these statements have no proper place, that the statements or evidence that is claimed to support these outside claims have no proper place upon this inquiry; that they are not here for any proper purpose as bearing upon the correctness or incorrectness of the charges as to unreasonable rate of freight or that we are pooling earnings or pooling our freight. The meaning of the clause of the commerce act is so clear that it is entirely surplusage to offer any suggestions to the Commission upon it; but it is enough to say that I think up
706 to the present time no one has ever suggested that under the provisions of section 5 came an alleged combination to restrain competition in the purchase or sale of any commodity in Pennsylvania or New York, or even to restrain competition in the transportation of any commodity, either State or interstate, but that is all I can see that the papers, contracts, and conversations now referred to could possibly relate to.

It may be that Mr. Shearn and the client whom he represents or the stockholders or some other parties may at some other suitable time or place, and in a way sanctioned by the law, question that guaranty or charge us with having committed an unlawful act in doing it; but this is not the time and this is not the place, and I submit that the best interests of the public and the best interests of all concerned will be best subserved to limit this inquiry to the matters that are proper before this Commission.

Com'r CLEMENTS. If these contracts themselves show, or in relation to the testimony tend to show, that competition between these carriers of this coal was restrained or reduced, would you doubt the relevancy of that fact as pertinent to the question of reasonable rate?

707 Mr. BROWNELL. I most certainly should. I do not think it has any bearing on any such question. I do not think that question is at issue.

Com'r CLEMENTS. The question of the reasonableness of these rates is at issue.

Mr. BROWNELL. The question is, it seems to me, whether or not the rates published by the respondent companies are reasonable or unreasonable.

Com'r CLEMENTS. Is it important or not to know whether these rates are rates of competion or rates of combination, or made in restraint of trade?

Mr. BROWNELL. There is no suggestion that the contract between the Temple Iron Company and the trust company and the railroad companies, guaranteeing their bonds, has had anything to do with the question of rates. In fact it has been shown that these rates have been in force a great many years. They have lowered during the past fifteen years. That has been shown already. It has not been questioned. There is no suggestion, where the rates have been lowered during the last fifteen years, where these railroads have carried from the same colliers of

708 the Temple Iron Company that they carry from to-day; there is no suggestion that the rates are any lower than when extended to the former owner. It is not even contended that such a condition exists.

Com'r CLEMENTS. I understand the contention of counsel to be that competition has been throttled. I do not know whether it was before these contracts, in pursuance of them, or because of them. I understood you to say that theyhad nothing to with the reasonableness of these rates.

Mr. BROWNELL. I think the contracts as they are or the contracts as they are represented to be have no bearing upon the question of the reasonableness or unreasonableness of these rates.

Com'r CLEMENTS. Well, it seems to me that the question of whether there is free competition or whether it has been partly restrained, is a very pertinent question on the subject of reasonable rates. The law does not fix reasonable rates and does not authorize this Commission to do so, but the Supreme Court said, in the Joint Traffic case, that one of the objections to that kind of agreement, for carriers to agree upon and maintain rates, even if claimed to be reasonable, if it was done in

709 restraint of trade, one final and might be to destroy all means of comparison, and there could be no standard of comparison to determine a reasonable rate. What the facts are as to these contracts I do not know, but it does not seem to me it is a question foreign to the issues before us.

Mr. BROWNELL. There is no suggestion in the contracts themselves, or in the facts as outlined by counsel that would have any bearing. We are simply suggesting that the investigation be limited to the matters properly in issue here. The suggestion has been made, the same as before the United States district attorney and before the attorney-general of the State of New York, that this Commission shall go into all these

matters and secure testimony and evidence, if they can or if it can be found, and submit it to the United States district attorney or the United States Attorney-General—the Department of Justice—the same department before which complainant is now proceeding.

Com'r PROUTY. We might have power to begin that kind of an investigation.

Mr. BROWNELL. Yes, sir.

710 Com'r PROUTY. Of course, we are not doing that here, but as I said to you yesterday, how are you going to determine what is a reasonable rate? Is not one of the most important elements in determining a reasonable rate the question of what has been the rate in the past under free competition, and is it not important to determine whether or not there has been competition?

Mr. BROWNELL. But so far as these contracts are concerned——

Com'r PROUTY. They allege that these contracts are evidence of certain acts in pursuance of a general scheme on the part of all your roads to apportion the amount of coal and to fix and maintain the rates that coal shall be carried at. These contracts may not show that, but they are a part of that general scheme.

Mr. BROWNELL. The rates have lowered, as I say. It appears before you conclusively already that the rates have not been affected at all by the purchase of these collieries or the making of these guarantees.

Com'r PROUTY. How do you account for the fact that the rates on anthracite coal are about twice as much as on bituminous coal?

711 Mr. BROWNELL. I do not account for it on that theory, because I conceive the facts to be to the contrary.

Com'r PROUTY. We took testimony the other day as to rates on coal to Kansas City, where it was said that coal was carried in there at $1 a ton.

Mr. GOWAN. We can not compete with the roads running over the plains of Kansas that cost about $10,000 a mile.

Com'r PROUTY. It was for you to show, I suppose, not that it was a reasonable rate, but that it was put in because of competition.

Mr. GOWEN. The Commission does not think we are required to put in unreasonable rates?

Com'r PROUTY. Certainly not, but you are not to enter into an illegal combination to maintain rates.

Mr. BROWNELL. Our contention is that the rates on anthracite coal are just and reasonable per se, and as compared with other commodities, and we shall be very glad to present the facts which will lead to that conclusion. We simply object to having the proceedings beclouded with a vast amount of vague charges.

712 Com'r YEOMANS. Mr. Shearn, do you claim that these contracts of the railroads constitute a pool in violation of section 5 of the act to regulate commerce?

Mr. SHEARN. I do. I say it affords evidence of that; and let me call attention to the fact that the gentleman avoids the point raised in the questions of Commissioners Clements and Prouty just now. It is not because he misses the point, but he will not admit the importance of the determination whether the rates are competitive rates or not. They are dodging that in every possible way. The important thing is to know

whether these are competitive rates. One mine of the Temple Iron Company is reached by the Lehigh Valley and the Delaware, Lackawanna & Western. They are two different and supposedly competing railroads, reaching one of these mines, and they have banded together in these contracts. Another mine in the Lackawanna region is reached by the Delaware, Lackawanna & Western, the Delaware & Hudson, and the Erie. There are three of them. Does not that make it clear how important this is?

713 Mr. CARR. Do you mean to say that the Delaware & Hudson is a party to that?

Mr. GOWEN. I am not willing to have statements of fact go on the record unsupported. There is no testimony to that effect.

Mr. SHEARN. I say one of these mines is reached by the Delaware, Lackawanna & Western, Delaware & Hudson, and the Erie.

Mr. GOWEN. There is no proof on the record to that effect and he has no right to make statements of fact of that sort.

Mr. SHEARN. Anybody can ascertain that by looking on a railroad map. There is no private business there being delved into or exposed to view. I say that one of the Temple Iron Company's mines is reached by three of these railroads, two of which are banded together in these Temple Iron Company contracts. I say another Temple Iron Company mine is reached by the Delaware & Hudson and the Erie. Another is reached by the Erie and the New York, Susquehanna & Western. Another, the Pierce mine, in Lackawanna County, is reached by

714 the Delaware & Hudson and the Erie. Then that makes it perfectly clear how, irrespective of our allegation of pooling, these contracts are relevant and material. It shows that there is no competition there. The rates from those places on those roads are not competitive rates. Of course it is material.

Mr. BROWNELL. It seems to be admitted that these rates are not affected by the guarantee or contract. The rates were in force years before. If there was anything wrong in the original making of those rates when Simpson & Watkins operated the collieries or the companies they controlled operated them, that is one thing. But how is that affected? At a later date there was a guarantee of bonds and stocks——

Com'r PROUTY. It has been alleged in the press that while these rates have been nominally the same, they have not at all times been maintained by the railroads, and one reason why they were not maintained——

Mr. BROWNELL. If that is so, it is a simple thing to take the best evidence on that and find out from the books of the railroad

715 companies and the coal companies, as your honor suggested yesterday, what was paid by these companies and any other shippers.

Mr. SHEARN. Are you going to permit us to have those books?

Mr. BROWNELL. You will have whatever you are entitled to. We are going to bring before this Commission all proper evidence, ruled to be proper by the proper tribunal.

Mr. SHEARN. Well, why do you make that suggestion?

Com'r FIFER. Do you concede that if these contracts bear on the question whether these rates are competitive or noncompetitive, that they are competent testimony?

Mr. BROWNELL. What is that question, your honor?

Com'r FIFER. If they bear on the question whether the rates charged by the railroad companies are competitive rates or not, would they then be competent?

Mr. BROWNELL. I do not think they would, because of the
716 other grounds already stated by counsel. I do not think they are competent.

Com'r FIFER. Even though they might tend to show that they were intended to stifle competition between the roads?

Mr. BROWNELL. If they tended to show that fact that might be made, I think, properly the basis of proceedings against the offending parties, when they are all in court under certain laws. That might also be made the subject of an inquiry by your honorable Commission under section 12 or other section, but I conceive that it would not make it proper or relevant on this inquiry.

Com'r FIFER. Even though they might bear on the rates themselves, whether they are competitive rates or not?

Mr. BROWNELL. I think even then, if that were conceded, they would not properly be introducable here—subject to introduction here. There are various other parties interested, not parties to this proceeding, and the Commission is asked to find that these contracts, involving the interests and property rights of thousands of people all over the United States, parties to those contracts themselves, who are not in court, that all these agreements may be branded as illegal and practically void
717 without those parties having an opportunity to be heard. It does not seem to me that that is proper. That is only one of a half dozen or a dozen different objections. But it seems to me that if the contracts have any remote bearing on any matters suggested, they are so remote that the best evidence as to the rates that have been charged is obtainable from the railroad companies that have charged them and the shippers that have paid them.

Mr. ROSS. On behalf of the Delaware, Lackawanna & Western Railroad Company I desire to object to the introduction of these contracts on the ground that they are irrelevant, incompetent, and immaterial, and they are between parties not before this tribunal.

Com'r PROUTY. Did your road sign one of those contracts?

Mr. ROSS. My road signed one, and it seems to me that until the other parties to this agreement are before this tribunal this Commission can not require this trust company to bring these contracts in here and submit them for examination.

Com'r FIFER. Is that company represented here?

718 Mr. ROSS. They appear here specially by counsel; that is, the trust company appears here because their secretary has been subpœnaed. His counsel is here. But there are more than two parties. Our company has merely entered into an agreement with the Temple Iron Company and the Guaranty Trust Company that we would guarantee a certain amount of stock and bonds of the Temple Iron Company. That is on the theory that certain of these coal companies are located on our line. For years and years we have had the business of carrying that coal to market. Our company did this simply for the protection of the transportation, for the protection of the business of the transportation of the coal on our line to market. Here were Simpson & Watkins, who had control of these eleven collieries. Simpson [illegible]

collieries to the Lehigh Valley, or the Erie, or the Pennsylvania, or the Lackawanna. The business from the mines on our line would have been taken away from us. That was the controlling feature, to my mind, which led our company to enter this contract, simply that our
719 business there might be protected. It seems to me it is perfectly reasonable why they should enter into that agreement. We have not a single share of the stock of the Temple Iron Company or a single bond. We have simply lent our good name to a certain amount of the stock and bonds of the Temple Iron Company so that we may be assured of the business we have had for years and years and the business we are entitled to. If these mines had been taken over by another gentleman, that business would have been taken away from us.

Now, our company had the right, under the laws of the State of Pennsylvania, to make that guaranty. We had the right to buy the stock and bonds of the Temple Iron Company if we pleased. We are given that right by our charter by the laws of the State of Pennsylvania. We are given the right to buy and sell coal—our own company. Now, then, it seems to me that, having that right, nothing in this contract, so far as we are concerned, can be held to be illegal; but if it is illegal, this is not the proper forum in which to inquire into it. Counsel has already on two occasions presented this question. He has been before a Republican attorney-general of the State of New York and asked that we be prosecuted under the Donelly antitrust act.

720 Mr. SHEARN. And you were not?

Mr. ROSS. We were not. He called us again before the Democratic attorney-general of the State of New York—I had the pleasure of listening to Mr. Shearn's argument delivered here on two or three occasions—and still the attorney-general of the State of New York did not take it up. He is in possession of these contracts. They were before both the attorney-generals and they did not make a move. Why? Because they are convinced that we have not done anything illegal.

Mr. SHEARN. We have not heard from him yet. You must have heard from him before us, if you know he has not done anything.

Mr. ROSS. You were were up there three months ago. It seems to me that if your case was as clear as you tried to make out, you would have heard from it before now. Then he appeared before the Attorney-General of the United States, at Washington. If these contracts are in restraint of trade, we are violating the Sherman antitrust act. That act provides that every contract in restraint of trade is hereby declared illegal. The Attorney-General has had possession of these contracts. He is not afraid to act. If he thought these contracts were illegal he would
721 have proceeded long before this. He proceeded against the Northern Securities Company, and in a most admirable way won his case. I have here the "American" of this morning, owned and controlled by Mr. Hearst, Mr. Shearn's client, and this is what he says. There is a long declaration of what he is going to do for the people of this country. He says:

"When that truth in all its enormity is known to the people we are confident that a public opinion must be created which will force action by President Roosevelt. The Attorney-General is his servant and is obliged to take orders from him or resign."

This petition, it seems to me, is brought as a political matter by Mr. Shearn's client and it seems to me his object so clearly is one of a political nature that this Commission ought to take cognizance of that fact. What he wants done is to have these companies prosecuted under the Sherman Anti-Trust Act. He has been before the Attorney-General at Washington and before the United States District Attorney here again and again. They are in possession of all these facts and yet they do not proceed because they are convinced that these contracts which are now the subject of this discussion before you are not illegal.

722 Commissioner YEOMANS. They have seen them, have they not?

Mr. Ross. Yes, sir.

Com'r YEOMANS. We have not.

Mr. Ross. Well, Mr. Shearn has copies of them.

Mr. SHEARN. If you admit they are true copies, I will put them in evidence, and that will save all this trouble.

Mr. Ross. Now, it seems to me, the inquiry here properly is one as to whether or not the rates are reasonable or unreasonable, and as to whether the companies are doing that which is unlawful. These questions have been before this Commission before, as to whether or not these companies were charging unreasonable rates. In the Coxe case the Commission that a reasonable rate was $1.50 a ton from the mines to tide water.

Com'r PROUTY. They never put in that rate, did they?

Mr. Ross. No, sir; because the court said you had placed the rate too low.

Com'r YEOMANS. Have not conditions changed so that coal can be transported much cheaper now?

Mr. Ross. I think not.

723 Com'r YEOMANS. It has been shown so by every road in the United States.

Mr. Ross. After the Commission entered their order, the rates on the transportation of coal were lowered, but that was because of the conditions at the time. The inexorable law of supply and demand controlled the situation and for a number of years the rates were below $1.50 a ton. Now the rate is $1.55 a ton, as I understand, five cents higher than this Commission found was a reasonable rate, and certainly, the court having found that $1.50 was too low a rate, the court would not now hold that $1.50 was an excessive rate. If the conditions have changed, it is certainly proper for this Commission to recommend that the rate be lowered, but I think we can show when it comes our turn that the conditions in the transportation of anthracite coal——

Com'r CLEMENTS. Congress has not fixed a rate or authorized this Commission to do so, but has enacted a law under which the rates can be fixed by computation, and it is there important in determining a reasonable rate to know whether there is competition.

Mr. Ross. I think perhaps it is important for the Commission to know whether there is competition.

724 The CHAIRMAN. What is the real point here, Mr. Ross? Are not the circumstances and conditions under which this rate is established by the carriers and maintained by them, whether competitive or otherwise, properly shown and taken into account in determining whether that rate is reasonable or not in contemplation of the first section.

Mr. Ross. This Commission has already found that a rate of $1.50 a ton is reasonable and at that time they went into all questions involved in ascertaining and determining the reasonable rate.

The CHAIRMAN. But that rate has not been charged.

Mr. Ross. No, a rate of $1.55 a ton has been charged.

The CHAIRMAN. The tariff rate to-day, which is the rate under consideration, is higher than the rate which the Commission approved.

Mr. Ross. Is higher to-day than the Commission found to be reasonable at that time and is being charged undoubtedly because the court said that the Commission had failed to take into consideration an important element in arriving at that conclusion.

The CHAIRMAN. I understood you to say substantially that the
725 question as to whether a given rate is established and maintained by the carriers under conditions of competition or otherwise is competent to be shown as bearing on the reasonableness of that rate.

Mr. Ross. Yes, sir.

The CHAIRMAN. It appears that the Temple Iron Company controls the production of a very large percentage of the anthracite coal, does it not?

Mr. Ross. No, sir.

The CHAIRMAN. Well, not a very large percentage.

Mr. Ross. That is only about one million tons where we produce in the neighborhood of six million tons ourselves. Simpson & Watkins are one and one-half per cent. Our objection is urged on the ground that those contracts are between this company and other parties not in this proceeding.

The CHAIRMAN. I appreciate that.

Mr. THORNE. As counsel for the Central Railroad of New Jersey, I desire to have my objection entered for the same reasons as those already presented.

Mr. GOWEN. I desire to add a few words, if the Commission please. Suppose these contracts were before the Commission, and it appeared
726 that the railroad companies, having some six or seven years ago established rates, as the result of competition, and that those rates had continued down to the present time; that two or three years ago the Temple Iron Company, organized and promoted by the railroad companies, bought a certain number of collieries and operated those collieries and the output of those collieries over the railroads, and that no change in the rates followed that arrangement, but that the rates had remained the same. What deduction can the Commission draw from that, covering, as it probably did, two or three per cent of the product of the anthracite coal fields? What can it possibly show in favor of the proposition that the establishment of this arrangement materially affected the rates.

Mr. BROWNELL. I wish to call attention to the fact that it is not claimed, I think, by Mr. Shearn that there is anything in these contracts that provides for the division of tonnage or for the regulation of rates or anything in regard to the rates. The only suggestion is, that the guarantees of the several companies of the bonds are not made by each company of the one hundred per cent of the bonds, but each company severally guarantees a given percentage, and he suggests that that percentage may be divided. First, it is suggested that the percentage may be

divided in proportion to the output of the particular mines in
727 question; that is, the proportion they had been accustomed to carry in the past.

Mr. SHEARN. I never suggested that.

Mr. BROWNELL. It was suggested by some one.

Mr. SHEARN. Judge Campbell, I think.

Mr. BROWNELL. You suggested that you did not know—that it might be in accordance with an unlawful arrangement. My understanding is that the argument of Mr. Shearn is not that there is anything in these contracts directly or in themselves providing for a division of tonnage or restricting competition in any way, but that merely because of the fact of the guarantees by the several companies of some fractional part of the bonds that something may be inferred, perhaps, when taken in connection with some other evidence that may be given later on. Is not that it, Mr. Shearn?

Mr. SHEARN. No, sir.

Mr. BROWNELL. I would be glad to know what it is. I so understood it—that the contracts had no express provision in regard to restriction of competition. I would like to know what counsel claims they do show.

Mr. CARR. On behalf of the Delaware & Hudson and the New York, Ontario & Western, I wish to object to putting in all these con-
728 tracts, on the ground that there is no charge in the petition, no claim or pretense made by counsel for petitioner that either of those companies was concerned with this Temple Iron Company contract or arrangement, or had anything to do with the pooling of the earnings according to certain percentages, and inasmuch as it is claimed that this evidence is proper in order that an inference may be drawn by the Commission that unreasonable rates are charged by all the companies, including the Delaware & Hudson and the New York, Ontario & Western, we have a right to object to testimony being put in with which we are n t connected from which an inference of that kind can be drawn.

Com'r PROUTY. What percentage of the total of the anthracite coal does the Delaware & Hudson carry?

Mr. CARR. About five per cent, and the New York, Ontario & Western about three per cent.

Mr. SHEARN. Does that include the tonnage carried by the Erie for the D. & H.?

Mr. CARR. It includes it all. If the Commission will pardon me, the New York, Ontario & Western is perhaps about five per cent and ours about eight. There have been some collieries added, I
729 think, within the last three or four years.

The CHAIRMAN. Well, we are not free from doubt about this question. We are constrained to hold, in view of the statements of complainant's counsel, that further evidence will be produced in connection with the contracts in question that the objections should be overruled. Of course, as the evidence stands now it is clear the contracts are not admissible.

Mr. SHEARN. Because you have not seen them.

The CHAIRMAN. The statement is made by counsel that other evidence will be given and other facts brought forward which, taken in

connection with these contracts, will tend to show, first, that there is a division of this traffic in violation of the fifth section of the act, and that the rates are established and maintained by the carriers by a combination, and not as the result of competition.

Mr. BROWNELL. Then if the Commission is in doubt about the propriety of the introduction of these contracts and there is no evidence in now making them competent, would it not be proper to defer acting upon this until such evidence is produced?

730 The CHAIRMAN. Well, that objection was substantially waived because, as stated this morning, this witness has been called, for the accommodation of himself and counsel, out of his order.

Mr. BROWNELL. The contracts are here, and so far as the introduction in testimony now——

The CHAIRMAN. Of course, if this is not properly connected with other evidence so as to become admissible, then of course it will not be taken into account, but will be stricken out. We feel freer to take that course because it appears from the admissions of counsel that these contracts have already had general publicity.

Mr. BROWNELL. I do not so understand it. I think counsel misunderstood the statement made by Mr. Ross.

The CHAIRMAN. I do not understand that anything is to be apprehended from such publicity as these contracts may get by the fact that the Commission holds that they must be produced.

Mr. BROWNELL. Except in spreading on the record things that are concededly not proper to be received at this stage of the proceeding.

Mr. SHEARN. I ask the witness to produce the contracts.

731 The CHAIRMAN. And he declines to do so on advice of counsel?

Mr. JULIAN T. DAVIES. Yes, sir.

The CHAIRMAN. For the reasons stated by counsel?

Mr. DAVIES. Yes, sir.

The CHAIRMAN. Which the Commission holds at present are not sufficient and directs that the contracts be produced by the witness, and on advice of counsel he persists in his refusal to do so.

Mr. DAVIES. Yes, sir.

Mr. CARR. Does the Commission hold that they are admissible to affect the Delaware & Hudson and the New York, Ontario & Western?

The CHAIRMAN. Not yet.

Mr. CARR. I wanted to know.

Mr. SHEARN. We will excuse the witness.

The CHAIRMAN. Do counsel for respondents desire to interrogate this witness? If not, he will be excused.

The witness was excused.

At 12.45 o'clock p. m. the Commission took a recess until 2 o'clock.

732 AFTER RECESS.

2 o'clock p. m.

The CHAIRMAN. Whom will you call next, Mr. Shearn?

Mr. SHEARN. Mr. McAnulty.

Mr. ROSS. If it please your honor, in respect to calling Mr. Sloan as a witness here, I desire to say that he has not had anything to do with

the affairs of the Delaware, Lackawanna & Western Company for years. He is a very old man, eighty-five or eighty-six years of age, and really ought not to appear upon such an occasion. I had occasion within the last two years to request him to go upon the stand for the company in a very important case, but his family would not permit him to do that; they were fearful of the result. He is subject to fainting spells, and I have explained these facts to Mr. Shearn and he has consented not to call him, at least for the present.

Mr. SHEARN. I am very anxious, of course, to have Mr. Sloan's testimony, but counsel has stated to me that it might be at the risk of his life, and I would not desire to call him if such is the case, but it seems to me that counsel should permit me to read in evidence the testimony of Mr. Sloan, given by him before the legislative committee investigating this subject in 1897. Mr. Sloan testified that he was present at the meeting of these respondent railroad companies in February, 1896, and that an agreement was made at that meeting to divide up the anthracite tonnage in certain agreed proportions. Of course that is germane to this case, and if counsel will permit me to read in his testimony I will excuse Mr. Sloan. In any event I will excuse him until I see that I can not get along without him. I think that is a fair suggestion to make.

733

Mr. ROSS. I would like to see the testimony first.

The CHAIRMAN. Mr. Shearn, proceed with your examination of Mr. McAnulty.

J. S. MCANULTY, a witness on behalf of complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Where do you live, Mr. McAnulty?

Mr. MCANULTY. Scranton, Pa.

Mr. SHEARN. What is your business?

Mr. MCANULTY. I am a merchant and somewhat interested in the coal business.

Mr. SHEARN. How long have you been connected with the coal business?

734

Mr. MCANULTY. About ten years.

Mr. SHEARN. With the anthracite coal trade?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. With what company have you been connected?

Mr. MCANULTY. With the Connell Coal Company and the Melville Coal Company.

Mr. SHEARN. The Connell Coal Company is the William Connell Company?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. You are generally familiar with the conditions that have prevailed in the anthracite coal region relative to the mining and transportation of coal during the ten years you have mentioned?

Mr. MCANULTY. Somewhat familiar; yes, sir.

Mr. SHEARN. Do you recollect anything about the movement among the independent operators in the Lackawanna region in 1898 looking toward the building of an independent railroad to tide water?

Mr. MCANULTY. I can not state as to its being in 1898, but I remember something of the effort to organize a railroad company for the transportation of anthracite coal.

735

Mr. SHEARN. Do you recollect the time or the occasion of the sale of the Simpson & Watkins collieries to the Temple Iron Company?

Mr. MCANULTY. The time?

Mr. SHEARN. Yes, sir.

Mr. MCANULTY. I do not remember the time; no.

Mr. SHEARN. Do you recollect that those collieries were sold to the Temple Iron Company?

Mr. MCANULTY. I recollect they were sold; yes, sir.

Mr. SHEARN. Was that, as you recollect it, about January or February, 1899?

Mr. MCANULTY. I should say about that time.

Mr. SHEARN. Now state whether this movement looking toward the establishment of an independent railroad to tide water took place before or after the sale of the Simpson & Watkins collieries to the Temple Iron Company.

Mr. MCANULTY. It was before, I think.

Mr. SHEARN. Who were some of the independent operators who were active in that movement?

Mr. MCANULTY. Mr. Thomas H. Watkins, Mr. E. B. Sturgis,
736 Mr. E. L. Fuller, Mr. John Gernyn, and Mr. William Connell.

Mr. SHEARN. Do you recollect the names of any others?

Mr. MCANULTY. There was Dr. J. N. Rice.

Mr. SHEARN. He is dead, is he not?

Mr. MCANULTY. Yes, sir. And Mr. C. D. Simpson.

Mr. SHEARN. The partner of Mr. Watkins?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. How large a proportion of the independent operators in the Lackawanna region were included in that movement?

Mr. MCANULTY. Well, a large majority of them.

Mr. SHEARN. Where was that railroad to run from, and to what point was it to go?

Mr. MCANULTY. My recollection is that it was to commence at a station on the Erie & Wyoming called Wimmers, and go to tide water.

Mr. SHEARN. Where is that place?

Mr. MCANULTY. In Wynne County, Pennsylvania.

Mr. SHEARN. Were the mines of these gentlemen whose names you have given located in or about that region?

Mr. MCANULTY. Not in Wynne County. They were located in the Lackawanna and Wyoming regions.

737 Mr. SHEARN. And this projected railroad would have been fed from their collieries?

Mr. MCANULTY. That was the purpose and the idea.

Mr. SHEARN. To what place do you say the road was to come?

Mr. MCANULTY. Do you mean, where was it to start?

Mr. SHEARN. No; at what place was it to terminate?

Mr. MCANULTY. I can not tell the exact terminal, but at what is known as tide water.

Mr. SHEARN. Do you know what was done with reference to the organization of a company to build the railroad?

Mr. MCANULTY. The company was organized, as I recollect it now, and properly officered.

Mr. SHEARN. Was the output of the various mines pledged to that road when completed?

Mr. MCANULTY. My impression is that the outputs were pledged.

Mr. SHEARN. Were these different operators that you have named stockholders in the company that was organized?

Mr. MCANULTY. They were.

Mr. SHEARN. After the sale of the Simpson & Watkins col-
738 lieries to the Temple Iron Company, what became of that movement to build that railroad?

Mr. MCANULTY. Well, the organization continued.

Mr. SHEARN. Was the railroad built?

Mr. MCANULTY. It was not.

Mr. SHEARN. What part in that movement did Simpson & Watkins play?

Mr. MCANULTY. Mr. Watkins took quite a prominent part in it—Mr. Thomas H. Watkins.

Mr. SHEARN. Do you know upon what basis the coal of the independent operators was sold to the various railroad companies at that time?

Mr. MCANULTY. On a basis of sixty per cent, I think.

Mr. SHEARN. That is to say, they sold their coal to the companies for sixty per cent of the tide-water price?

Mr. MCANULTY. Prepared sizes; sizes above pea coal.

Mr. SHEARN. Do you recollect that the Pennsylvania Coal Company was thereafter sold to the Erie Raiload Company?

Mr. MCANULTY. I understood that it was.

Mr. GOWEN. If Mr. McAnulty knows about these transactions I do not object, but if it is a mere rumor, I do.

Mr. SHEARN. I asked in order to fix the date in his mind; that is all.

What do you know, Mr. McAnulty, about the formation of a
739 committee representing the independent operators in the various anthracite fields in 1901 relative to procuring different contracts for the sale of their coal? Was such a committee formed?

Mr. MCANULTY. Not in 1901, I think.

Mr. SHEARN. When was it formed?

Mr. MCANULTY. Some time in the fall of 1900, I think.

Mr. SHEARN. After the New York, Wyoming & Western scheme had fallen through?

Mr. MCANULTY. I do not know that it had fallen through.

Mr. SHEARN. Well, some time in 1900, as you recollect it?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. Who were the members of the committee?

Mr. MCANULTY. What committee do you refer to?

Mr. MCANULTY. The committee representing the independent operators in the different fields.

Mr. MCANULTY. Dr. H. M. Howe, of Philadelphia, and Mr. M. S. Kemmerer.

Mr. SHEARN. Where is Mr. Kemmerer?

Mr. MCANULTY. I think his residence is at Mauch Chunk.

740 Mr. SHEARN. And who was the other member of the committee?

Mr. MCANULTY. Mr. William Connell, of Scranton.

Mr. SHEARN. Were you present at any of the conferences between the members of that committee and the officers of the anthracite-carrying railroad companies?

Mr. MCANULTY. I was.

Mr. SHEARN. Where were those conferences held?

Mr. MCANULTY. They were held in Philadelphia.

Mr. SHEARN. How many of the conferences were you present at, Mr. McAnulty?

Mr. MCANULTY. I think probably all of them.

Mr. SHEARN. Who were present at the conferences representing the railroad companies?

Mr. MCANULTY. Mr. George F. Baer, Mr. John B. Garrett, Mr. W. H. Truesdale, and Mr. Cumming, of the Erie. I do not know his initials.

Mr. SHEARN. Vice-president of the Erie?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. What road did Mr. Garrett represent?

Mr. MCANULTY. The Lehigh Valley. I do not say road—rather represent the coal companies.

741 Mr. SHEARN. At any rate those were the gentlemen who were present at the conferences.

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. What was the subject-matter of discussion at the conferences?

Mr. MCANULTY. The purpose of their meetings was to negotiate a sales contract.

Mr. SHEARN. Were they on the same or different terms from those which prevailed?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. I say were those on the same or different terms?

Mr. MCANULTY. On different terms.

Mr. SHEARN. What representations did the mine owners make to the representatives of the railroad or coal companies?

Mr. MCANULTY. They claimed that they should get more money for their coal.

Mr. SHEARN. More than sixty per cent?

Mr. MCANULTY. More than the sixty per cent.

Mr. SHEARN. And whether they should or whether they should not was the subject-matter under discussion at the various conferences?

Mr. MCANULTY. It was.

742 Mr. SHEARN. Was an agreement arrived at?

Mr. MCANULTY. An agreement was; it was arrived at between the committee; but the committee was not an official committee. It did not guarantee on the part of the individual operators that a contract such as might be concluded would be signed by the individual operators.

Mr. SHEARN. But with that qualification what was the agreement arrived at between this committee of three and these representatives of the railroads or coal companies?

Mr. MCANULTY. It was quite a long document, containing terms and conditions including an increase in the price at tidewater on prepared sizes from sixty to sixty-five per cent of the tidewater price.

Mr. SHEARN. Then the result of these conferences was embodied in contract?

Mr. MCANULTY. Yes, sir; it was.

Mr. CAMPBELL. You do not say that it was a contract, but a draft of a contract?

Mr. SHEARN. Well, a draft of a contract, as Judge Campbell suggests; and it was signed by the gentlemen who were parties to these conferences?

Mr. MCANULTY. Very generally, I think.

743 Mr. SHEARN. And the basis of the new agreement entered into was a contract whereby the coal companies owned by the railroad company should take the coal of the independent operators on a basis of sixty-five per cent, instead of sixty per cent as had theretofore been the case?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. How generally was that contract accepted by the independent operators?

Mr. MCANULTY. It was very generally accepted, I think.

Mr. SHEARN. You have seen the contract, have you not?

Mr. MCANULTY. I have.

Mr. SHEARN. Do the contracts provide that the mine owner shall sell to the coal company the entire future product of his mine?

Mr. GOWEN. One minute, please. If the Commission please, of course this is an effort to prove contracts which Mr. Shearn wanted us to produce the other day. I think it is so improper that I should say to the witness, speaking for one of the companies parties to the contract, that we had thought—that is, the Lehigh Valley Coal Company have thought—it was not germane to this inquiry; that is, that those contracts should be produced or their contents disclosed in the records in this case,

744 and, as representing one of the parties to the contract, I would be glad if the witness would exercise his privilege and decline to answer as to the contents of the contracts.

Mr. SHEARN. It seems to me that it is very improper for Mr. Gowen to suggest to this witness what he should do in respect to answering questions which I put to him that are proper, and I protest against his suggestion to this witness that he should not answer questions that are put to him by me, or which are ruled to be proper or relevant.

Mr. BROWNELL. It has not been ruled to be relevant. I object to this as irrelevant and improper. The contract is the best evidence, and the question of whether that is proper to be produced we have objected to. We decline to produce that and that is subject to the determination by the court, but, if it is proper to be proved, the contract is none the less the best evidence and should go in, if anything at all, and not the statement of the witness as to what the contents of these papers are.

Com'r FIFER. When you serve notice on opposing counsel to produce a certain paper and it is not produced, that is ground for oral evidence as to its contents, is it not?

Mr. BROWNELL. It was produced to the court, objection being

745 made to its competency and relevancy, and as to the propriety of its admission. That question is now under consideration in accordance with the requirements of the law under which the Commis-

sion is constituted. The question of competency is to be determined by the court.

Com'r PROUTY. The court might compel the witness to produce the contract.

Mr. BROWNELL. If we are in error, it may be we would be required to produce it.

Com'r PROUTY. You have declined to produce the contract and we receive the secondary evidence.

Mr. BROWNELL. I wish to note the objection.

Com'r PROUTY. If this witness wants to take the responsibility of being fined for declining to answer, of course he can take that responsibility.

Mr. BROWNELL. We note the objection.

Mr. CAMPBELL. If your honors please, I object to this because it is not the best evidence. The best evidence is the contract itself. The contents of the contract is proof, but it is immaterial, absolutely immaterial to the question that we are considering. It is perfectly competent for this gentleman to prove exactly what was done; that is to say, that the coal of—I am not familiar with this region and therefore I
746 do not have the name—it is perfectly competent to show that the fact was that this coal was sold by such and such a producer to such and such a coal company at a price delivered, and that that price was a certain proportion of the tide price, but it don't aid you in getting out the material thing we are inquiring into to see the contents either by visual observation or oral observation as to what somebody thinks was in the contract, or even to see the contract itself. The question is, what was done and was the thing which was done wrongful in respect of the questions that are before your honors. That is my objection.

The CHAIRMAN. Will the stenographer please read the question again?

The question was repeated as follows:

"Do the contracts provide that the mine owner shall sell to the coal company the entire future product of his mine?"

Com'r PROUTY. Mr. Shearn, is it probable that this witness knows what the contract did provide unless he executed contracts himself or saw some of the contracts? He testified that an agreement was entered into between a committee representing the independent operators and certain people representing the railroads or coal companies.

747 Mr. SHEARN. He has stated that. Now, in pursuance of that agreement contracts were entered into, and he is familiar with the contents of those contracts, and I am asking him as to some of their interesting provisions.

The CHAIRMAN. He may state what the agreement was.

Mr. SHEARN. What was the agreement?

Mr. MCANULTY. Well, if you will let me explain myself just slightly, as far as the making of these contracts with the individual operators were concerned, I can not testify as to what these contracts contained. I can simply state as to the negotiations or the submission of a memorandum of contracts, which were subsequently to be submitted to the individual operators for their conclusion and signature.

Mr. SHEARN. And which, you say, was subsequently accepted by a large majority of the operators?

Mr. MCANULTY. I understand so.

Mr. BROWNELL. Have you any personal knowledge of the execution of such contract with any individual operator?

Mr. MCANULTY. No, sir.

Mr. BROWNELL. You have no personal knowledge that any such contract as that was finally concluded?

Mr. MCANULTY. No, sir.

748 Mr. BROWNELL. I renew my objection.

Mr. SHEARN. What were the provisions of the proposed contract which was agreed to at the conference between the representatives of the railroad coal companies and the independent operators?

Mr. BROWNELL. I object to that also on the same ground.

The CHAIRMAN. He may state what the agreement arrived at was between this committee and the officials named.

Mr. BROWNELL. There is no evidence of its execution.

Mr. SHEARN. It was agreed upon. He has already testified to that—that at these meetings, or at these conferences—at the final conference, it was agreed upon.

Mr. BROWNELL. I would like to ask the witness a question. Have you personal knowledge as to whether any agreement that may have been finally executed, was, or was not, the agreement that was considered, the terms of which you were familiar with? Do you know whether any contract was finally executed that was the same as the contract that was under consideration at that time?

Mr. MCANULTY. Not excepting by hearsay.

Mr. BROWNELL. You have no personal knowledge, Mr. McAnulty?

Mr. MCANULTY. No, sir.

749 Mr. SHEARN. I do not care about that. What I want to know is, what were the terms of the contract that was agreed upon as the result of these various conferences you have spoken of relative to the purchase of anthracite coal? You have already stated, as I recollect it, that it provided for the purchase of prepared sizes on the basis of sixty-five per cent of the tidewater price. That is correct, is it not?

Mr. BROWNELL. The witness has stated that he does not know the terms of any agreement between any of these parties and any other parties that was finally executed and which became a contract.

Mr. SHEARN. It is not a question of the terms of the contracts that were executed subsequently to the entering into the contract between the gentlemen at these conferences and the independent operators. I will show later that the contracts that were actually executed were identical with the contract that was agreed upon at these conferences, but first I want to show what the contract was that was a upon at these conferences, and, as I recollect, the witness stated that it provided for the purchase of coal from independent operators at sixty-five per cent of the tidewater price.

The CHAIRMAN. That he has stated.

750 Mr. BROWNELL. It does not appear from the witness's knowledge that there was any agreement executed.

The CHAIRMAN. He stated that he was present at the conference when they made an agreement, when they agreed what should be done.

Com'r PROUTY. That is a fact which shows how this whole thing went along. If the material thing were what the contract was that was entered into, or what was done under that contract it would be another question. That is not directly in issue. He is undertaking to show now how this coal business was conducted and whether there was competition, and he shows there was a conference between the railroad presidents or the representatives of the coal companies and the representatives of the independent operators by which an adjustment was arrived at.

Mr. BROWNELL. He is attempting to show that at an informal conference or discussion of these matters——

Mr. SHEARN. Why "informal?"

Mr. BROWNELL. Call it what you will, certainly there was no executed contract made.

Mr. SHEARN. He claims that there was.

Mr. BROWNELL. He claims that there was an understanding reached at such time.

Mr. SHEARN. He said there was a very long document.

751 Com'r PROUTY. The witness testified that the committee did not officially represent the independent operators; that they were not bound by their agreement, and that it was simply a recommendation.

Mr. BROWNELL. What was recommended by them and which may have been embodied in whole or in part we submit is improper to spread upon the record as a memorandum of agreement between the parties.

The CHAIRMAN. We think the witness may state what the agreement was.

Mr. SHEARN. Now, please look, Mr. McAnulty, at this contract, being an exhibit in connection with the testimony of Mr. J. E. Childs, the general manager of the New York, Ontario & Western Railway Company, before the Industrial Commission in 1901. Read that contract.

The CHAIRMAN. I suppose you want to see if he identifies it?

Mr. SHEARN. Yes, sir.

Mr. MCANULTY (after reading contract). What was your question? I have read it.

Mr. SHEARN. Does that contract embody the provision of the agreement reached by the conference you have spoken of?

Mr. MCANULTY. My impression is that it does.

752 Mr. SHEARN. I offer it in evidence.

Mr. BROWNELL. I submit that his impressions that the document embodies the provision goes a little further than is right and proper. He has no personal knowledge.

The CHAIRMAN. He testifies that he was present at these conferences when they made the agreement. Was the agreement reduced to writing, Mr. McAnulty?

Mr. MCANULTY. The agreement made at that time?

The CHAIRMAN. Yes.

Mr. MCANULTY. It was printed at that time.

The CHAIRMAN. Was the agreement submitted at the conference a written agreement at that time?

Mr. MCANULTY. It was.

The CHAIRMAN. And at the last conference the agreement was submitted as the draft of a contract in that form?

Mr. MCANULTY. It was submitted to each conference in form.

The CHAIRMAN. Does that represent the final form of the agreement?

Mr. MCANULTY. As I recollect it, it does.

Mr. SHEARN. That is your best recollection of it?

Mr. MCANULTY. Yes, sir.

753 The CHAIRMAN. Were you sufficiently familiar with the agreement in all its provisions made at that time so that you identify this as expressing that agreement?

Mr. MCANULTY. I feel that I was.

Mr. SHEARN. You heard it read over a good many times, didn't you?

Mr. MCANULTY. Yes, sir; I did.

Mr. SHEARN. How many of these conferences did you say there were?

Mr. MCANULTY. I can not recollect how many there were.

Mr. SHEARN. Were there a half dozen?

Mr. MCANULTY. Yes, sir; fully that many.

Mr. SHEARN. And the terms of the contract were under discussion at each of these conferences?

Mr. MCANULTY. Yes, sir.

Mr. SHEARN. I offer the contract in evidence.

Mr. ROSS. I object. Is this the contract that your employes—you are employed by the Connell company, or were, at that time?

Mr. MCANULTY. I was secretary and treasurer of the Connell Coal Company, yes; sir.

754 Mr. ROSS. Is the contract in question the same as the Connell Coal Company entered into?

Mr. MCANULTY. They did not enter into any contract. They did not sign this contract.

Mr. ROSS. Was there any contract similar to that in existence or entered into at that time?

Mr. MCANULTY. They sold out their colliery before they signed any contract. They sold out to the Lehigh Valley Coal Company.

Mr. ROSS. Then the Connell Coal Company never entered into that contract?

Mr. MCANULTY. No, sir.

Mr. ROSS. Then you are not familiar with any contract that was executed?

Mr. MCANULTY. I have stated before that I was not.

Mr. BROWNELL. You do not know as a matter of fact that that contract is the same as the agreement?

Mr. MCANULTY. No, sir.

Mr. BROWNELL. In answer to the question put by your honor whether the agreement in question was a written one, not the one which was under consideration before, and which had not been produced,

755 although a subpœna had been issued, but a separate written agreement, I submit that this is not competent; that parole evidence is not proper to prove that agreement. No subpœna or request has been made for the production of that agreement.

Com'r PROUTY. What was done with that paper?

The CHAIRMAN. That is, the paper that you had at the conferences?

Com'r PROUTY. The contract that was agreed upon. Was there anything signed by the committee of the independent operators?

Mr. McANULTY. There was nothing signed at all.
Com'r PROUTY. Was anything signed by the railroad representatives?
Mr. McANULTY. There was nothing signed by them.
Com'r PROUTY. You simply had a draft of a contract there that was agreed upon should be recommended?
Mr. McANULTY. Yes, sir.
Com'r PROUTY. There were no signatures?
Mr. McANULTY. No, sir.
Com'r PROUTY. Were those papers printed? Was the agreement in printed form, or in typewriting form, or written?
756 Mr. McANULTY. Printed.
Com'r PROUTY. And everybody had a copy?
Mr. McANULTY. Yes, sir.
Com'r PROUTY. Have you any copy now in your possession?
Mr. McANULTY. I am not sure that I have.
Com'r PROUTY. Do you know where a copy could be found?
Mr. McANULTY. I think lots of them could be found.
The CHAIRMAN. We are disposed to hold that it may be received, not, of course, as evidence of what the contract was, but as showing what was agreed upon and recommended by this committee.
Mr. SHEARN. Certainly. That is what we want. Instead of taking an hour or two in order to get all the details of these conferences and the result, it is all embodied in this paper, and that was agreed upon at the last conference. I shall only read a paragraph or two of this, but the essential principle of the contract is what I want to bring out:
(Reading.) "This agreement, made and executed in the city of Philadelphia, Penna., this day of nineteen hundred
757 , between (hereinafter called the seller), party of the first part, and (hereinafter called the buyer), party of the second part, witnesseth:
"First. The seller hereby sells and agrees to deliver on cars at breaker to the buyer all the anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:
"Shipments to be made from time to time as called for by the buyer. The buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit; the buyer to use its best efforts to find a market for the seller's coal so as to enable the seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the seller to work its collieries as many days in each year as other
758 collieries work similarly situated.
"The buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms, or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers. It being understood that so far as practicable the quantity ordered shall

not be less than a just proportion of all the anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the president for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any market change take place affecting the productive capacity of the colliery, either the buyer or the seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

"Second. The buyer agrees to pay and the seller agrees to accept the following prices for said coal, when prepared in accordance with
759 the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breakers:

"For all sizes above pea coal, sixty-five per cent of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

* * * * * * *

"Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the buyer at tide on all sales of each size of coal from the region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the buyer and seller, by whom they shall be accepted, subject to the right of appeal to the arbitration board, in the settlement between buyer and seller. All statistics given such
760 accountant shall be treated by him confidentially and the resulting averages shall be given by him to buyer and seller.

"It is understood that when the words f. o. b. price occur herein, the actual f. o. b. price received is meant, without any deduction for commissions, demurrage, or any other charges."

The fourth is an immaterial provision.

"Fifth. Payment shall be made monthly in cash. A partial payment of at least one dollar ($1) per ton shall be made on or before the twelfth of each month and the balance on or before the twentieth for all coal delivered by the seller under this contract during the preceding calendar month. Provided, that if default shall be made by the buyer in any payment aforesaid, the seller may, in its option, declare this contract forfeited by giving notice of such default for a period of at least five days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month, this contract may be peremptorily terminated by the seller without such notice.

* * * * * * *

761 "Ninth. It is understood and agreed that the seller will ship to the buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the seller's mining operations and the coal retailed at the breaker as hereinbefore provided), pre-

pared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the seller will reprepare the same until it conforms to the required standard.

"Tenth. A ton of coal under this agreement shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the seller under this contract shall be weighed either upon scales at mines, tested and approved by the buyer, and by the weighmasters approved by the buyer, or upon the weigh scales of the railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

762 "Eleventh. The seller will consign and manifest said coal to such points and parties as the buyer shall from time to time direct, and will furnish and send to the buyer and to the consignees named by the buyer, and to such other parties as the buyer may direct, such copies of manifest and such notice relating to coal shipped as the buyer may direct; and the seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said collieries.

* * * * * * *

"Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than pea coal shall be less than $3.50 per ton, then the seller may, at its option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach three dollars and fifty cents per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the seller to the buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the permanent arbitration board.

"Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors, and assigns of the parties hereto, respectively."

That is all, Mr. McAnulty.

(Contract referred to marked "Exhibit No. 23.")

763 Mr. Ross. I wish to object further to this being offered in evidence for the reason that it does not pertain to the Delaware, Lackawanna & Western, nor has it any such contracts.

The CHAIRMAN. Do counsel for respondents desire to interrogate the witness?

Mr. GOWEN. This so-called independent road which was promoted was promoted entirely by owners of coal mines, was it not?

Mr. MCANULTY. I think so.

Mr. GOWEN. So that it would have been another road, the owners of which were coal miners and shippers of coal?

Mr. MCANULTY. Yes, sir.

Com'r PROUTY. Are you in the coal business now?

Mr. MCANULTY. Yes, sir; I am interested in the coal business.

Com'r PROUTY. In what capacity?

Mr. MCANULTY. I have an interest in two operations and am secretary and treasurer of another operation.

Com'r PROUTY. By an "operation" you mean a colliery or mine?

Mr. MCANULTY. Yes, sir.

764 Com'r PROUTY. Those operations are what are called independent operations, are they?

Mr. MCANULTY. Yes, sir.

Com'r PROUTY. How do you market your coal at present; by selling through the coal company or direct?

Mr. MCANULTY. My relations to two of them are such that I am not competent to testify to that. I have an impression, of course.

Com'r PROUTY. How is it as to the third one?

Mr. MCANULTY. We are selling our own coal.

Com'r PROUTY. Where is that colliery located?

Mr. MCANULTY. In Sullivan County.

Com'r PROUTY. Tributary to what railroad or railroads?

Mr. MCANULTY. It is on the line of the State line in Sullivan. It is not in the region these contracts refer to at all.

Com'r PROUTY. In what market do you sell your coal?

Mr. MCANULTY. Well, we have just taken on the operations. Previously a large portion of that coal was marketed in northern New York and Canada.

765 Com'r PROUTY. How long have you been engaged in the coal business?

Mr. MCANULTY. I have been officially related to it for possibly ten years.

Com'r PROUTY. When you first had to do with that business, how did the independent operator sell his coal, through the coal company as a rule or on his own account?

Mr. MCANULTY. The Connell Company have always had a sales contract with the selling company.

Com'r PROUTY. Do you know anything about how the business was conducted when the coal was sold by the company itself on its own account?

Mr. MCANULTY. How they sold the coal?

Com'r PROUTY. Not how the coal company sold the coal, but do you know of the operation of any colliery that might sell its own coal? You had not to do with that kind?

Mr. MCANULTY. No, sir.

Com'r PROUTY. Do you know whether there are such collieries now? You testified that your own colliery is one.

Mr. MCANULTY. Not excepting by hearsay.

766 Com'r PROUTY. When you sat down to discuss this matter with the railroad presidents, what argument did you use to induce them to pay you 65 per cent instead of 60 per cent?

Mr. MCANULTY. Let me explain myself. I was simply at those conferences either with Mr. William Connell or representing him in a sense when he was not present.

Mr. CAMPBELL. Mr. Connell is your father-in-law, is he not?

Mr. MCANULTY. Yes, sir.

Com'r PROUTY. I will change the question and ask you what argument the independent operator used to induce the railroad company or the coal company to pay him 65 per cent instead of 60?

Mr. MCANULTY. Well, in the first place, he wanted more money for his coal, and thought he was entitled to more compensation because of the increased cost of mining, and the increase of royalty.

Com'r PROUTY. Suppose the railroad company would not give it to him, what would he do?

Mr. MCANULTY. He would either go into bankruptcy or he might possibly have made a profit on the 60 % basis.

767 Com'r PROUTY. My question is, how did you induce these carriers to pay you 65 per cent instead of 60? What pressure did you bring to bear or them to induce them to raise the price they paid before?

Mr. MCANULTY. I hardly think I can answer that question.

Mr. GOWEN. Did not that increase to 65 per cent follow an increase of wages in 1900?

Mr. MCANULTY. I think it did.

Mr. SHEARN. Do you concede, Mr. Gowen, tha tit was increased to 65 per cent?

Mr. GOWEN. He testified that it was.

Mr. ROSS. How long has what you term the sales contract existed?

Mr. MCANULTY. Up to January 1st, 1901.

Mr. ROSS. How long before that?

Mr. MCANULTY. During the whole of its existence; about a ten years' period, I think, previous to 1901.

Mr. BROWNELL. Prior to that time it received less for its coal.

Mr. CARR. Have you a recollection of the time prior to the 60 and 40 per cent contracts when the divisions were 50 and 50?

768 Mr. MCANULTY. No, sir.

Mr. CARR. Have you any recollection of any division where it was less than 60 and more than 40?

Mr. MCANULTY. I remember hearing of a 55 per cent contract and a 50 per cent contract.

Mr. CARR. That was before the 60 and 40?

Mr. MCANULTY. Yes, sir.

Com'r FIFER. Was anything done in the way of building this railroad you spoke of?

Mr. MCANULTY. I believe there was surveys made and rails purchased.

Com'r FIFER. Did they secure the right of way?

Mr. MCANULTY. I think a portion of it was secured.

Com'r FIFER. Why was the scheme to build the railroad abandoned?

Mr. MCANULTY. I do not know. I can not answer that question. On my own knowledge I can not answer.

Com'r CLEMENTS. Have the collieries run to their full capacity since this agreement you testified about?

Mr. MCANULTY. I can not answer as to that, because the com-

769 panies I was interested in at the time made no 65 per cent contract.

Com'r CLEMENTS. Are you familiar enough with the others to know whether or not there was a limitation on their operation so that they did not produce what they might have?

Mr. McANULTY. Please give me that question again.

Com'r CLEMENTS. I say, are you familiar enough with the others to tell whether the output has been limited below the fair capacity of the mines?

Mr. McANULTY. I presume the consumption would necessarily limit the output. I do not know that it has been arbitrarily limited.

Com'r CLEMENTS. Do you know whether they have been run to full capacity?

Mr. McANULTY. I think they possibly run 200 or 205 days. They might have run more. Some places might have run more than that and some less than that. It is allowing to individual operating conditions, I should say.

Mr. SHEARN. Just one question. What difference, if any, was there in the price received for prepared sizes of coal after these contracts
770 went into effect? Was there any change in the tide-water price?

Mr. McANULTY. The price received by the operator was larger—I could not answer that question—because of the 5 per cent increase, I presume.

Mr. SHEARN. Do you know whether the tide-water prices of coal were advanced after those contracts were entered into?

Mr. McANULTY. I can not answer that at this time.

Mr. SHEARN. You know what they are to-day, do you not?

Mr. McANULTY. Relatively; yes, sir.

Mr. SHEARN. Are they lower or higher than they were before those contracts went into effect?

Mr. McANULTY. Higher, I should say.

Mr. SHEARN. How much higher?

Mr. McANULTY. I should say, maybe, 50 cents a ton.

Com'r PROUTY. Fifty cents a ton where—at the mine?

Mr. McANULTY. No; at tide water.

Com'r PROUTY. Is this coal sold at tide water or at the mines?
771 Mr. McANULTY. Which coal do you refer to?

Com'r PROUTY. Coal carried to tide water.

Mr. McANULTY. It did not all go to tide water. It is distributed throughout the country.

Com'r PROUTY. Suppose a dealer in coal wants to buy anthracite coal, is the price quoted to him at the mines, or at tide water, or at his station?

Mr. McANULTY. It is the price at which the coal is to be delivered.

Com'r PROUTY. Where?

Mr. McANULTY. If in New York City, it would be the price at New York City; if in Buffalo, the price at Buffalo—wherever the coal is to be delivered on the line or at tide water.

Mr. ROSS. You spoke of the mines running 200 days. Did you intend the Commission to understand that there was a limitation?

The CHAIRMAN. He said that there was no arbitrary limitation that he knew of.

Mr. ROSS. Two hundred days is about the average working time of a mine, is it not?

772 Mr. McANULTY. About an average. Some might work more and some less.

Mr. Ross. That was the average testified to before the Strike Commission, that on account of accidents, holidays, etc., the average was about 200 days.

The CHAIRMAN. That seems to be all. Mr. McAnulty, you are excused.

Mr. SHEARN. Mr. Ross, how about reading this testimony of Mr. Sloane?

Mr. Ross. I have not had a chance to look at it.

Mr. SHEARN. Is Mr. Skeele in the room?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. I will ask Mr. Skeele to take the stand.

773 J. W. SKEELE, a witness on behalf of the complainants, having been duly sworn, testified as follows:

Mr. SHEARN. Where do you live, and what is your business?

Mr. SKEELE. I live in Glen Ridge; my business is selling coal.

Mr. SHEARN. Are you the sales agent of the Lehigh Valley Coal Co.?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. And have been how long?

Mr. SKEELE. About three years, here.

Mr. SHEARN. Where is your office?

Mr. SKEELE. At 26 Cortlandt street.

Mr. SHEARN. What do you do as sales agent of the Lehigh Valley Coal Company?

Mr. SKEELE. I attend to the sales of the coal.

Mr. SHEARN. Sales of coal of the Lehigh Valley Coal Company?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. Here at tide water?

774 Mr. SKEELE. Yes, sir.

Mr. SHEARN. Brought here by the Lehigh Valley Railroad Company?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. Do you sell that coal on commission?

Mr. SKEELE. No, sir.

Mr. SHEARN. What is your arrangement with the Lehigh Valley Coal Co. for the sale of its coal.

Mr. SKEELE. They pay me a salary.

Mr. SHEARN. In other words, they run the deparment themselves. You are not an indpendent agent getting so much a ton from the coal company for selling its coal?

Mr. SKEELE. No, sir; I draw a salary.

Mr. SHEARN. And they pay the expenses of your office?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. Who does, the Lehigh Valley Coal Co. or the railroad company?

Mr. SKEELE. The coal company.

Mr. SHEARN. You get your money from the coal company?

775 Mr. SKEELE. Yes, sir.

Mr. SHEARN. How many men have you under you in that business?

Mr. SKEELE. I could not tell you.

Mr. SHEARN. You could not tell me?

Mr. SKEELE. No, sir.

Mr. SHEARN. I suppose you could tell me approximately, could you not?

Mr. SKEELE. Well, I would like to understand what you mean—what kind of men?

Mr. SHEARN. How many men do you have under your jurisdiction and supervision in the office of the sales department of the Lehigh Valley Coal Company—how large a force of men are there there?

Mr. SKEELE. In the New York office?

Mr. SHEARN. In the New York office?

Mr. SKEELE. Probably thirty.

Mr. SHEARN. Do you know what the actual expense of the New York office is to the coal company?

Mr. SKEELE. No, sir; I could not tell you.

Mr. SHEARN. Who pays the men that work under you?

776 Mr. SKEELE. The treasurer.

Mr. SHEARN. The treasurer of the Lehigh Valley Coal Co?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. Does he send the money to you to distribute to them?

Mr. SKEELE. No, sir.

Mr. SHEARN. He sends their warrants to them direct?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. Well, do you know what the salary roll of the office amounts to?

Mr. SKEELE. Well, it varies. I could not tell you now.

Mr. SHEARN. Well, what is it, approximately, for the 30 men?

Mr. GOWEN. I do not want to be objecting, but I do not see what that has to do with the case.

Mr. SHEARN. It has a great deal to do with it.

Mr. GOWEN. I wish you would give some reason why.

Mr. SHEARN. I will suggest the reason. Here is coal coming down here under these 65 per cent contracts. The Lehigh Valley Coal Company under the contract has to give up $2.60 to the miner. It is important to know what other elements it has to give up so as to know what

777 to go to the railroad company for the transportation of the coal. In some instances a sales agent is paid so much a ton on the coal. In case a department is run which is an expense to the coal company and which makes the returns from the sale of the coal just so much less, and as the final place where the money goes is the railroad company, and if there is a deficit the only person or corporation who will make up the deficit is the railroad company, and as the railroad company owns all the stock of the coal company, the net result is a net result to the railroad company. Therefore, it is very important to know what there is left after the payment of 65 per cent to the miner and the payment of the cost of selling. It seems to me the relevancy of it is clear.

Mr. ROSS. Why do you quote $4.00 when the price is $4.50?

Mr. SHEARN. Because during the period under consideration the price has been $4.00 a ton at times, and if you have been receiving only $1.25 for transporting coal during two or three months each year, that

is a fact on which the Commission will be able to say that it is all you are entitled to receive.

778 Mr. Ross. Thirty-five per cent of $4.50 is $1.57½.

Mr. SHEARN. Yes, and taking out ten cents for selling, it is $1.47½, which is under the tariff rate of $1.55.

Mr. GOWEN. It simply comes to this. Of course, the Lehigh Valley Coal Company is doing something in the coke business, and a very large business other than the coal it purchases under these contracts, and the question is whether we are to go into an examination of the Lehigh Valley Coal Company's accounts. Of course, the objection I made the other day, and which I regret that I felt obliged to insist upon notwithstanding the position of the Commission, related not so much to those special contracts, as to the broad question that the status of the Lehigh Valley Coal Company was not one that could properly be enquired into, and that its dealings had nothing to do with the question of the transportation of coal by the railroad, and it is better, it seems to me, to have it understood that I desire to insist on this, and we will, therefore, be under the necessity, even if it is ruled that it is proper to open up

779 this additional investigation as to the Lehigh Valley Coal Company, of requesting the witnesses called for the Lehigh Valley Coal Company to decline to answer such questions until the matter has been determined by the proper tribunal. The question of profitableness or unprofitableness in the purchase and sale of coal I do not think is one that this Commission has jurisdiction of. But I think on this question whether the Lehigh Valley Coal Company is making or losing money—picking out particular portions of the business which have relation to this so-called coal question—I do hope the Commission, to that extent, will exclude the testimony, because it seems totally irrelevant to the issue.

Mr. SHEARN. No one can express defiance of the Commission more agreeably and courteously than Mr. Gowen, or refusal to allow testimony to be brought out. It is perfectly clear that every fact material to ascertaining what the net result to these railroad companies for the transportation of coal is, is going to be strenuously resisted. It is equally

780 clear that we are going to be as strenuous in following up our attempts to procure the testimony. The only way we can do is to ask the witness the questions, take the ruling of the Commission, and if the Commission decide that they are proper, go into court on contempt proceedings, which we will do.

Mr. GOWEN. There is not and will not be the slightest objection from the Lehigh Valley on any question bearing on the amount the Lehigh Valley Coal Company has paid the Lehigh Valley Railroad Company for the transportation of its coal.

Mr. SHEARN. I want to know what the Lehigh Valley Railroad Company gets and keeps for the transportation of coal, not what the Lehigh Valley Coal Company pays to the Lehigh Valley Railroad Company. It may appear if we ever get a look at the books—it may appear that there is a charge for the transportation of this coal, but the moment you look into the annual reports you find that the Lehigh Valley Railroad Company advances $800,000 a year to the coal company without compensation. In 1891 it furnished $1,500,000 working capital to them and charged no interest. I do not care what you call it. The essential

fact to be found is what is the net result after all these things to
781 the Lehigh Valley Railroad Company for the transportation of this coal. I do not care if there is a charge of $1.55 or $1.75 a ton. We want to know what is actually left to the railroad company when these masks are withdrawn or torn aside, when you take into consideration the advances by the railroad company to the coal company, when you take into consideration the fact that the coal company never paid a dividend, that the railroad company owns all the stock, that the operations of the coal company show a large deficit, notwithstanding the fact that the Lehigh Valley Railroad Company pays out every year from its own coffers $800,000 on the bonds of the Lehigh Valley Coal Company. Now, that payment and the advance of working capital, when taken into consideration with the number of tons of coal shipped over the Lehigh Valley Railroad from the mines of the Lehigh Valley Coal Company, or from the mines of parties selling to the Lehigh Valley Coal Company makes a discrimination in favor of that company on its face of about eighteen cents a ton on every ton brought here. The material thing is to get at the net result, and the only way we can do it is to find out how much it costs to sell coal here at tide water, and then we will see what is left to the railroad company for the transporta-
782 tion of the coal; and I say when you get that you will find that for several months each year they are transporting coal for about $1.25 a ton where it is purchased from an independent or where it is their coal, whereas the party who will not sell the product of his mine for all future time must walk up and pay $1.75 or $1.55 according to whether it is to go to Perth Amboy or Jersey City.

Mr. GOWEN. Your theory is we ought to charge more?

Mr. SHEARN. My theory is that this method of doing business should be broken up and competition reinstated in the anthracite coal region. That is what we are after.

The CHAIRMAN. Nominally the Lehigh Valley Coal Company is a shipper of coal over your road, Mr. Gowen?

Mr. GOWEN. Practically; yes, sir.

The CHAIRMAN. Well, actually; and there are other shippers of coal over your road? There is a tariff rate that all shippers pay. The Lehigh Valley Railroad Company owns the stock of the Lehigh Valley Coal Company?

Mr. GOWEN. Yes, sir.

The CHAIRMAN. So, in fact, it is carrying its own coal?

783 Mr. GOWAN. f course, if the Lehigh Valley Coal Company makes a contract to deliver coal, the Lehigh Valley Railroad Company can not be held for that. You can not hold a stockholder of a company liable for the actions of the corporation in such a case as that.

Com'r PROUTY. You charge the Lehigh Valley Company so much to transport its coal. It can not afford to pay it, and at the end of the year you give it back? That is what Mr. Shearn says.

Mr. GOWEN. The trouble is you are taking Mr. Shearn's statement. If he would start the other way we would be in a different position; but in point of fact he is misinformed as to the conditions prevailing in the Lehigh Coal Company. Of course the Lehigh Valley Railroad Company has advanced money in years past to the coal company, but

the Lehigh Valley Coal Company has enormously increased its coal lands. Those advances have not been because of a failure to make profits by the coal company, but from the fact that it has from time to time increased its ownership of coal lands and has improved them enormously the last few years by increasing the breaker capacity; and the advances he refers to were not made on account of the inability of
784 the company to make a profit on the mining and selling of its coal.

Com'r PROUTY. Mr. Shearn, it is sufficient for your purpose to show in a general way what it costs to sell this coal?

Mr. SHEARN. Yes, sir; if the witness can say how much it costs to sell coal at New York. How much does it cost per ton to sell prepared sizes and anthracite coal at New York City, Mr. Skeele?

Mr. SKEELE. That is a question that could be answered several ways. Do you mean the actual expense of selling a ton of coal? There is a wastage.

Mr. SHEARN. I have not come to that yet, but what is a fair average cost to the coal company for selling anthracite coal at tidewater per ton of coal—prepared sizes? Is it ten cents a ton or fifteen cents or twenty cents?

Mr. SKEELE. I would have to approximate that.

Mr. SHEARN. How would you approximate that?

Mr. SKEELE. Ten cents.

Mr. SHEARN. You do not think you are doing your client any injustice at that approximation?

Mr. SKEELE. I approximate it at that.

785 Mr. SHEARN. What is included in that cost of ten cents a ton?

Mr. SKEELE. The expense of the sales agency.

Mr. SHEARN. That is, office expenses?

Mr. SKEELE. Yes, sir; and salesmen's salaries.

Mr. SHEARN. Does that include losses on bad accounts.

Mr. SKEELE. I am not sure. I could not say as to that.

Com'r FIFER. Do you handle the coal in that estimate?

Mr. SKEELE. No, sir; just the cost of selling it.

Mr. SHEARN. Just the cost of making the sales while the coal is over in the pockets at the docks?

Mr. SKEELE. Yes, sir; that is the approximate cost.

Mr. SHEARN. Now, there is an amount of waste, is there not?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. In other words, coal bought under the 65 per cent contracts is bought under contract at the breaker and there is a waste between the breaker and the barge, is there not?

Mr. SKEELE. Yes, sir; there is. Your statement is not correct about it being bought at the breaker always.

786 Mr. SHEARN. Under the purchase contracts with the independent operators, the coal is bought on the basis of weight at the breaker, is it not?

Mr. SKEELE. I do not know anything about the contracts—not enough to determine.

Mr. SHEARN. You mentioned the element of waste and said that that is an element in the cost to the company in the sale of coal?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. How much figure does waste cut in percentage?

Mr. SKEELE. It depends on the price of coal.

Mr. SHEARN. Well, when coal is $4.00, prepared sizes, at tidewater, what is the percentage of waste?

Mr. SKEELE. Well, that I will have to approximate. I have not any figures before me.

Mr. SHEARN. How many years have you been in the coal business?

Mr. SKEELE. Twelve.

Mr. SHEARN. Connected with the business of selling coal?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. In the same general manner you are doing it now?

787 Mr. SKEELE. There is not a general manner. The conditions differ everywhere?

Mr. SHEARN. You have been in a position to observe the amount of wastage between the mines and tidewater?

Mr. SKEELE. It differs.

Mr. SHEARN. What has it been on the average the last two or three years?

Mr. SKEELE. I could not tell.

Mr. SHEARN. You started to tell.

Mr. SKEELE. I started to approximate it.

Mr. SHEARN. Well, approximate it.

Mr. SKEELE. You are talking of tidewater coal?

Mr. SHEARN. Tidewater coal; yes, sir.

Mr. SKEELE. Fifteen cents a ton. That is it, approximately.

Mr. SHEARN. So that in the matter of selling coal by the Lehigh Valley Coal Company, considering the net result to the company, there are two deductions to be made on each ton of coal, one of ten cents for the cost of selling and one of approximately fifteen cents for waste?

Mr. SKEELE. Yes, sir; that would be my estimate.

Mr. SHEARN. What other elements are there to be deducted?

788 How about the cost of putting it on board the vessels at the docks?

Mr. SKEELE. Well, that is included in the rate, sometimes.

Mr. SHEARN. Well, in what rate?

Mr. SKEELE. In the tide-water rate.

Mr. SHEARN. You mean in the price the coal brings?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. Are not you mistaken about that?

Mr. SKEELE. I would like to have the question asked over again.

Mr. SHEARN. I asked if you were not mistaken about that?

Mr. SKEELE. About what?

Mr. SHEARN. About the cost of unloading from the cars, or loading into the barges being included in the f. o. b. price of coal.

Mr. SKEELE. We make our price f. o. b. vessel, Perth Amboy.

Mr. SHEARN. That is, on board the vessel?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. That means it is $4 f. o. b. That means after the coal has been taken out of the cars and put into the vessel?

Mr. SKEELE. Yes, sir; that is the price.

789 Mr. SHEARN. Therefore there is no charge made against the purchaser of the coal for putting it on board?

Mr. SKEELE. No, sir; but it costs to put it on.

Mr. SHEARN. How much does it cost a ton to put it on?

Mr. SKEELE. I could not estimate that.

Com'r PROUTY. Who puts it on board, the railroad company or the coal company?

Mr. SKEELE. In our case, the railroad company. I do not know whether they make a charge to the coal company or not for doing that.

Com'r PROUTY. Is that included in the rate, Mr. Gowen?

Mr. GOWEN. Yes, sir; that is included in the rate.

Mr. SHEARN. You do not know how much it costs to put it on board, do you?

Mr. SKEELE. No, sir.

Mr. SHEARN. Is there an item known as demurrage—suppose the cars are not unloaded promptly?

Mr. GOWEN. I do not think Mr. Skeele knows anything about that.

Mr. SHEARN. Do you know?

Mr. SKEELE. I have not any personal knowledge.

790 Mr. SHEARN. If there is a charge for demurrage you do not make the person to whom you sell the coal pay that charge, do you?

Mr. GOWEN. It is not coal company charge, is it?

Mr. SKEELE. No.

Mr. SHEARN. If there is an item of demurrage, that comes out of the net result?

Mr. SKEELE. If they paid one; yes, it would.

Mr. SHEARN. When you sell the Lehigh Valley Coal Company's coal here, the checks in payment for it sent by the purchasers come to you, do they not—how do you bill coal?

Mr. SKEELE. They come to the sales agent.

Mr. SHEARN. You are the sales agent, are you not?

Mr. SKEELE. I am the general sales agent.

Mr. SHEARN. Do they come to you or some one else?

Mr. SKEELE. They come to the sales agent.

Mr. SHEARN. That is not you?

Mr. SKEELE. No, sir.

Mr. SHEARN. Do you know to whom he transmits the proceeds of the sales?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. To the coal company, I suppose?

791 Mr. SKEELE. To the treasurer.

Mr. SHEARN. To the treasurer of the coal company?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. He is treasurer of the railroad company, is he not?

Mr. SKEELE. Well, I think he is.

Mr. SHEARN. Who fixes the prices at which you sell your coal?

Mr. GOWEN. If the Commission please, I think I must insist on the objection I made that the transactions of the Lehigh Valley Coal Company can not be investigated here. The question of how the Lehigh Valley Coal Company sells its coal and to whom Mr. Skeele, as an officer of the company, reports is irrelevant here.

Mr. SHEARN. Without taking up time I think I can explain why this testimony is deemed by me to be relevant. It pertains to the pooling

charge. If the companies agree as to the output, and agree on the allotment and divide the tonnage in fixed proportions and then agree
792 on the price at this end, of course the result is that the proceeds of the business are divided or pooled among the companies in the proportions in which the coal is distributed under the allotment agreement.

Mr. GOWEN. The proposition is whether it is competent for this Commission to determine how the Lehigh Valley Coal Company sells its coal. I object to all testimony of that sort.

Mr. SHEARN. It all goes to this subject of whether the business is competitive or not. It is as important if not more important to know whether it is competitive after it gets here—this is where the money comes from—as it is to know whether it is competitive in transit or competitive in the manner of mining. We say it is not competitive in mining, transportation, or sale.

Mr. GOWEN. The question of whether it is competitive in the sale has nothing to do with it. The question is whether it is competitive in the carriage.

Mr. SHEARN. Out of the sales come the funds to pay the transportation.

The CHAIRMAN. The last question, as we understand it, is, who fixes the price at which your company sells the coal.

Mr. SHEARN. Yes, sir.

793 The CHAIRMAN. You may answer the question.

Mr. SHEARN. Who fixes the price at which the Lehigh Valley Coal Company sells its coal?

Mr. GOWEN. I do not object to that.

Mr. SKEELE. The Lehigh Valley Coal Company fixes the price of our coal.

Mr. SHEARN. Who transmits the information to you as to how much you shall charge for coal?

Mr. GOWEN. If the Commission please, this is an officer of the Lehigh Valley Coal Company. I do not want to be objecting all the time, and I ask for a ruling as to whether they are entitled to investigate the transactions of the Lehigh Valley Coal Company in the matter of its sale of coal.

The CHAIRMAN. Mr. Shearn, what do you expect to show?

Mr. SHEARN. I expect to show in this connection that he simply receives his instructions governing the prices at which coal shall be sold from an officer of the Lehigh Valley Coal Company, and upon the examination of the officer of the Lehigh Valley Coal Company, if he
794 tells the truth, who fixed these prices, we will find that they are fixed as the result——

The CHAIRMAN. We do not know anything about that. He says the Lehigh Valley Coal Company fixed the price.

Mr. SHEARN. How does he know this? I would like to know how he gets the information.

The CHAIRMAN. The witness may tell what officer of the coal company directs him as to the price at which he shall sell his coal. He is asked who fixes the price at which he sells the coal. He says the Lehigh Valley Coal Company. That means that some official of that communicates the figure to him.

Mr. SHEARN. Who is the official?

Mr. SKEELE. The first vice-president.
Mr. SHEARN. What is his name?
Mr. SKEELE. Mr. Robert H. Sayre.
Mr. SHEARN. Where is his office?
Mr. SKEELE. 26 Cortlandt street.
Mr. SHEARN. Do you get those instructions in writing?
Mr. SKEELE. No, sir.
Mr. SHEARN. How often does he give you instructions fixing the price of coal?
795 Mr. SKEELE. He consults with me all the time about the prices and tells me what to do.
Mr. SHEARN. Tells you what to do?
Mr. SKEELE. Yes, sir.
Mr. SHEARN. Does the Lehigh Valley Coal Company issue price circulars?
Mr. GOWEN. I insist on my objection on the question of what price the Lehigh Valley Coal Company gets for its coal.
The CHAIRMAN. We feel that we should know that he might show that the business of the coal mining company and the railroad company is so conducted as to eliminate competition in the transportation and in the rate.
Mr. GOWEN. He is now enquiring about the sale of coal.
The CHAIRMAN. We do not need to go very far with that. What is your question, Mr. Shearn?
Mr. SHEARN. Does the Lehigh Valley Coal Company issue price circulars, circulars stating the price of anthracite coal to be had at tide water?
Mr. GOWEN. So that the record will show, won't you state the exact purpose of your question? You have stated that already perhaps?
796 Mr. SHEARN. I think I have. I think the evidence is material and relevant, first, because it aids the Commission in determining whether the business is competitive business or not, selling coal, and therefore the business of transporting coal, and, second, because it relates to the issue of combinations and pooling of freight.
Mr. GOWEN. If the Commission please, I am very sorry that I have to say to the witness that I request him not to answer the question.
The CHAIRMAN. The present question is whether the Lehigh Valley Coal Company issues circulars of prices.
Mr. SHEARN. Circulars stating the price at which anthracite coal is to be had at tide water? Does it?
Mr. SKEELE. Under advice of my counsel I must decline to answer that.
Mr. SHEARN. Mr. Gowen here, the counsel for the railroad company, is also your counsel?
Mr. SKEELE. He is counsel for the coal company. I do not know about the rest of it.
The CHAIRMAN. The witness is directed to answer the question and declines under advice of counsel.
Mr. SHEARN. Do you know whether the Lehigh Valley Coal Company has, from month to month, since April 1st, 1901, issued circulars
797 to the trade stating the price at which its coal was to be purchased at tide water, do you know?

Mr. GOWEN. The witness will refuse to answer that.

Mr. SHEARN. You object to all questions relating to circulars?

Mr. GOWEN. Yes, sir, or prices.

Mr. SHEARN. What is the price for prepared sizes of coal, f. o. b. at Perth Amboy, maintained by the Lehigh Valley Coal Company at the present time?

Mr. GOWEN. I will not permit him to answer that.

Mr. SHEARN. Do you refuse to answer that question?

Mr. SKEELE. Yes, sir; for the same reason.

The CHAIRMAN. Mr. Gowen, if we were investigating the reasonableness of the grain rate from Chicago to New York, would it not be proper to show the price?

Mr. GOWEN. I think the Commission has held that that has very little to do with the rate.

The CHAIRMAN. It may have very little to do with it in that particular case, but, generally speaking, is not the value of the article, the rate on which is under consideration, a proper fact to show?

Mr. GOWEN. If he wants to show the market price that prevailed at any time, that is another question.

798 Mr. SHEARN. I will change the form of the question, then.

The CHAIRMAN. I wanted to see if Mr. Gowen's objection went to the point that the market price of coal is not a proper thing to show.

Mr. SHEARN. What is the market price of anthracite coal, prepared sizes, at New York to-day?

Mr. SKEELE. F. o. b. New York Harbor?

Mr. SHEARN. F. o. b. New York Harbor.

Mr. SKEELE. It is $4.50.

Mr. SHEARN. $4.50 a ton?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. And that is for the first of April—those were the prices prevailing the first of April this year?

Mr. SKEELE. Yes, sir.

Mr. SHEARN. What will they be on the first of May?

Mr. SKEELE. I do not know.

Mr. SHEARN. You do not know?

Mr. SKEELE. No, sir.

799 The CHAIRMAN. Presumably, he does not know what the market price will be on the first of May.

Mr. SHEARN. It may be, presumably, but, with all respect to the witness, I think it is not the fact. Have you not received instructions as to what the market price f. o. b. of anthracite coal will be at tide water on the first of May?

Mr. GOWEN. I object to that.

Mr. SHEARN. What was the market price of coal, f. o. b. New York Harbor, prepared sizes, on the first of April, 1902?

Mr. SKEELE. I think it was $4.00.

Mr. SHEARN. What was it on the first of May, 1902?

Mr. SKEELE. I think it was $4.10.

Mr. SHEARN. And on the first of June, 1902?

Mr. SKEELE. There was not any price, I believe. I think that was during the strike. Well, I do not know but there was a price. I do not know but there was some coal in the market.

Mr. SHEARN. You know the price had been announced in your circulars for six months ahead?

Mr. SKEELE. No, sir; I did not.

800 Mr. SHEARN. What was the market price of coal, f. o. b. New York Harbor, on the first of April, 1901?

Mr. SKEELE. I do not remember.

Mr. SHEARN. You do not remember?

Mr. SKEELE. No, sir.

Mr. SHEARN. Don't you know it was the same as on the first of April, 1902?

Mr. SKEELE. No, sir; I do not.

Mr. SHEARN. You were selling this company's coal then, were you not?

The CHAIRMAN: Is there not a different way of getting at the market price of coal?

Mr. SHEARN. I do not think so. I should have thought so if it had not been for this volley of objections. I have here Government reports, but of course they will not be accepted.

The CHAIRMAN. I should think there would be some financial paper that would show the prices of coal for every month.

Mr. SHEARN. Well, I have a gentleman who knows, but I thought this gentleman, who has been in the business for years would know.

The CHAIRMAN. He says he does not remember.

Mr. SHEARN. This price you have been speaking of was the

801 general market price maintained by all the companies at the same time, was it not?

Mr. SKEELE. It was the market price—I do not know that it was.

Mr. SHEARN. That is what made it the market price. What do you mean by the market price?

Mr. SKEELE. The going price; the general price. There was coal above and below it, I presume. That is the general price.

Mr. SHEARN. That is all.

The CHAIRMAN. Mr. Skeele, if I understand your testimony on the other point upon which you were examined, it comes to this, that out of the price which the coal shipper realizes here at tide water, he must pay the tariff rate for transportation, and approximately twenty-five cents a ton for the expenses of selling and the waste?

Mr. SKEELE. Yes, sir; I approximated that expense.

The CHAIRMAN. Out of what he gets for the coal when he has sold and delivered it, he must pay the cost of transportation?

Mr. SKEELE. That is right.

The CHAIRMAN. The tariff rate?

Mr. SKEELE. The tariff rate, yes, sir.

802 The CHAIRMAN. And appproximately 25 cents in addition for the expense of selling and the waste?

Mr. SKEELE. That selling expense varies, you know.

The CHAIRMAN. I understand, but that is your estimate?

Mr. SKEELE. Yes, sir.

Mr. CAMPBELL. If your honors please, I do not want to interfere with Mr. Gowen's status, but to my judgment this witness has made an awful mistake as to the fact, and inasmuch as your honors have received what I think is an erroneous impression, while it is a correct impression

of what the witness has said, I think it is all wrong, and I would like to correct him. It is about this matter of waste. Mr. Skeele, is there not an allowance—perhaps you do not know about this—is there not an allowance at the scales when the railroad weighs the coal for transportation of a certain percentage of the contents of the car to cover the waste? In other words, is it not literally true that the railroad rate for transportation, on which all accounts are based, is less than the actual rate by a small percentage, and that that reduction is intended to cover all
803 waste? If you do not know that do not let me take your answer, but if you know it thoroughly, answer the question.

Mr. SKEELE. I think the question was asked me what the waste was here at tide. I do not think that was considered in it in any way. I understand—I have nothing to do with the mining—but I understand there is a per cent allowed. I think the question asked me was as to the waste at tide, and the cost of selling at tide.

Mr. CAMPBELL. He had nothing to do with that.

Mr. SHEARN. Who?

Mr. CAMPBELL. The transporter and shipper.

Mr. SHEARN. Who did?

Mr. CAMPBELL. The purchaser who handles to the point of shipment over the piers. There is a percentage of waste and I do not suppose he pays that.

Mr. SHEARN. Who, the purchaser?

Mr. CAMPBELL. The seller.

Mr. SHEARN. I do not know what you suppose, but I know what the witness testified.

804 Mr. CAMPBELL. It shows an allowance so far as the question of transportation is concerned.

Mr. SHEARN. Why the contracts we have put in here show there is an allowance of one per cent.

Mr. CAMPBELL. Well, it used to be; now that covers waste up until it went into the boat. If there is any waste after it goes into the boat f. o. b., it is the purchaser's loss, and has nothing to do with the question which is before you. I do not understand it myself fully, and I will withdraw the question for the present and take it up later on.

Mr. SHEARN. It does not make any particular difference in any event, because when you consider the way the traffic is handled there is this waste; now the question is on whom does that waste fall. It falls on the Lehigh Valley Coal Company, as far as this witness is concerned, and falling on the Lehigh Valley Coal Company it necessarily falls on the railroad company. It is as broad as it is long. As far as an independent is concerned, of course a man who does not make one of these contracts not only has to pay this rate of 1.55, but he in addition has to stand this waste.

805 The CHAIRMAN. Unless he gets a reduction.

Mr. SHEARN. But as the proof stands now such is not the case.

Com'r PROUTY. How is this coal weighed into the boat?

Mr. SKEELE. The railroad weights, I think, govern.

Com'r PROUTY. The railroad weight' govern the weighing into the boat?

Mr. SKEELE. Yes.

Com'r PROUTY. So that when a carload is put into the boat it is billed out at whatever that car contains?

Mr. SKEELE. Whether there is an allowance for wastage I do not know.

Com'r PROUTY. How long have you been engaged in the selling of coal here in New York City?

Mr. SKEELE. About three years.

Com'r PROUTY. Did you know anything about it before that time?

Mr. SKEELE. Yes, sir; not in New York.

Com'r PROUTY. Whereabouts?

Mr. SKEELE. In the West—Chicago.

Com'r PROUTY. Is there a market price in Chicago for this anthracite coal.

806 Mr. SKEELE. Yes, sir.

Com'r PROUTY. How long had you been engaged in the selling of anthracite in Chicago?

Mr. SKEELE. Since 1891, Chicago and here.

Com'r PROUTY. Now, since that time, confining your attention to the time you were in Chicago, was the market price there maintained; I do not mean did you maintain it, but was it maintained by your competitors?

Mr. SKEELE. No, sir.

Com'r PROUTY. Since you have been here in New York there had been a market price; has that market price been maintained? I do not ask you whether you have maintained it or not, but from your general knowledge of the way coal has been handled has it been maintained?

Mr. SKEELE. At times, sometimes, and sometimes it is not.

Mr. CAMPBELL. Your honor don't mean to inquire whether the prices vary?

Com'r PROUTY. No; I understand there is what you call a market price.

Mr. CAMPBELL. The prices of anthracite coal, prepared sizes,

807 are not uniform, are they, Mr. Skeele; that is to say, there are variations in the prices; different sizes of anthracite coal—all anthracite coal is not alike?

Mr. SHEARN. I suppose if they are going into this question of price they are opening the door for me to go in also.

Mr. CAMPBELL. I am talking about the market price strictly.

Mr. SKEELE. No, sir; the prices are not all alike.

Mr. SHEARN. How about the same grade of coal at the same time?

Com'r PROUTY. I understand him to say, Mr. Shearn, that there is a market price for a certain grade and a market price for another.

Mr. SHEARN. Yes; but the market price for the same grade at the same time is maintained; is that the fact?

Mr. SKEELE. Not always.

Mr. SHEARN. Well, is not that generally the case? I do not mean during the strike, for instance; but at times like this, in ordinary times, take the last two or three years back, cutting out the strike, has

808 not the market price for the same grade of coal at the same time been the same?

Mr. SKEELE. The market has generally been pretty firm.

Mr. SHEARN. When you say firm, you mean it has been substantially the same, don't you?

Mr. SKEELE. Well, I think so.

Com'r PROUTY. During the last three years, as compared with your experience in Chicago during the five or six years, have the prices been better maintained in the last three years than the five years before, or the reverse, or about the same?

Mr. SKEELE. I should think better.

809 PETER DEWITT, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. You have been engaged in the coal business in New York a great many years, have you not?

Mr. DEWITT. Yes, sir; over thirty.

Mr. SHEARN. In the anthracite coal trade?

Mr. DEWITT. Yes.

Mr. SHEARN. And bituminous, too?

Mr. DEWITT. Not much in bituminous.

Mr. SHEARN. Mainly anthracite?

Mr. DEWITT. Mainly anthracite.

Mr. SHEARN. You buy coal by wholesale from the railroad companies, don't you, and sell it?

Mr. DEWITT. At times we buy it from the coal companies.

Mr. SHEARN. What is your business particularly?

Mr. DEWITT. Principally the retail of coal in New York.

Mr. SHEARN. And as such you had an opportunity of ascertaining the market price of coal from time to time for the last few years, had you not?

810 Mr. DEWITT. Yes.

Mr. SHEARN. On the same line with the questions asked by the Commissioner, what have you observed as to the market price of coal here at tide water for the same grade at the same time during the last two or three years, with the exception of the period during the strike?

Mr. DEWITT. Well, they have been uniform, although some of the companies have different grades at different prices.

Mr. SHEARN. Yes, but for the same grade at the same time they have been uniform for all the different companies?

Mr. CAMPBELL. Don't lead the witness.

Mr. DEWITT. I have not been dealing with all the companies, so far as I know.

Mr. SHEARN. What companies have you been dealing with, Mr. DeWitt?

(Question withdrawn.)

Mr. DEWITT. I can give you those I have not been dealing with. I have not dealt with the Philadelphia & Reading for four or five years direct.

811 Mr. SHEARN. What comparison is there as to the firmness, as the last witness put it, in the rates for anthracite of the same grade at the same time that has prevailed during the last two or three years as compared with what prevailed during the eight or ten years preceding?

Mr. DEWITT. Been more uniform for same grades.

Mr. SHEARN. Has there been a general advance in the price of anthracite coal, prepared sizes, at tide water since 1895?

Mr. DEWITT. Well, I can not recall the price of 1895.

Mr. SHEARN. Well, if the average price of stove coal in 1895 was 3.12 a ton at tide, has there been a general advance in that price since that time?

Mr. DEWITT. If that was so; but I do not know whether that was so.

Mr. SHEARN. Coal has been generally higher than $3.50 a ton since 1895 and 1896, has it not?

Mr. DEWITT. Well, I have not any data as to 1895 and 1896. I have for the last two years; and coal is 50 cents higher a ton this year than it was the year before.

Mr. SHEARN. How did the price on April 1st, 1901, compare with the price on April 1st, 1902?

812 Mr. DEWITT. 1901 and 1902 were the same.

Mr. SHEARN. You think they were the same?

Mr. DEWITT. I think they were.

Mr. SHEARN. You have seen the price circulars issued by the different coal companies, have you not?

Mr. DEWITT. By some of them I have, not all of them, but I could not recall them; their exact price I could not recall, because there are different prices there.

Mr. SHEARN. For the different grades of coal?

Mr. DEWITT. Yes; if you speak of free-burning coal, what is known as free-burning coal—white ash——

Mr. SHEARN. What companies to your knowledge have been in the habit of issuing price circulars during the last two or three years; say since April, 1901—the Reading Coal & Iron Company?

Mr. DEWITT. I believe the Reading Coal & Iron Company; I think there are some that do not issue price circulars except on application; if I have not applied for them I have not received them.

Mr. SHEARN. How about the Delaware, Lackawanna & Western?

Mr. DEWITT. I do not know that they issued a price circular except perhaps this year.

813 Mr. SHEARN. Don't you recollect they issued them in 1901, month by month?

Mr. DEWITT. I do not, sir.

Mr. SHEARN. How about the Lehigh Valley?

Mr. DEWITT. I can not say positively that the Lehigh Valley have; if I wished to purchase coal I would apply for a circular for the month I would wish to buy it.

Mr. SHEARN. And they would give you a circular?

Mr. DEWITT. Yes; they have given me a circular from time to time or given me a price from time to time or a slip of paper. I would be in the office and take the price.

Mr. SHEARN. Have you observed on those price circulars, either at the bottom of the circular or accompanying the circular, a statement of the discount that would be allowed on the price month by month?

Mr. DEWITT. I think I have on one or two. I could not say which circular.

Mr. SHEARN. You recollect the Reading circulars stating that the price is $4.50 on the 1st day of April, 1902; that it will vary ten cents a month for the next five months?

814 Mr. DEWITT. I never saw it $4.50. I think that was for September, if it was there.

Mr. SHEARN. Or if the price was $4.00, do you recollect reading a circular where the price was stated at $4.50 a ton?

Mr. DEWITT. Yes.

Mr. SHEARN. You do? In what year?

Mr. DEWITT. I do not know. I can not say positively it was Reading, sir. I can not say positively it was Reading. I can remember in a general way circulars for $4.50 and 50 cents discount for the month of April.

Mr. SHEARN. And 40 per cent for the month of May?

Mr. DEWITT. Forty cents.

Mr. SHEARN. And thirty for the month of June, and so on.

Mr. DEWITT. Yes; but I can not say positively which company.

Mr. SHEARN. But you have seen that on more than one company's circular, have you not?

Mr. DEWITT. I may have seen it on one or two.

Mr. SHEARN. Haven't you seen it on Delaware, Lackawanna & Western circulars?

Mr. DEWITT. I could not say, positively. I believe that is understood, though.

815 P. B. HEILNER, called as a witness on behalf of the complainants, was duly sworn.

The CHAIRMAN. If this is to be a long witness you had better put on somebody else and let him be excused until to-morrow.

Mr. SHEARN. Very well; I will call Mr. Burns.

The CHAIRMAN. Mr. Heilner is excused until to-morrow.

MICHAEL F. BURNS, called as a witness on behalf of the complainants, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. What is your business?

Mr. BURNS. Selling coal.

Mr. SHEARN. At New York?

Mr. BURNS. New York and Jersey.

Mr. SHEARN. Your firm is what?

Mr. BURNS. Burns Brothers.

Mr. SHEARN. You are large dealers in New York, are you not?

816 Mr. BURNS. Well, I do not know; we are modest.

Mr. SHEARN. How long have you been in that business?

Mr. BURNS. 25 years, about.

Mr. SHEARN. What have you observed as to the prevalence of a uniform price for the same grade of coal among all the coal companies selling coal at tide water, New York, for the last two or three years, with the exception of the period during the strike?

Mr. BURNS. Well, coal has been very scarce during that period, and there has been a fairly uniform price.

Mr. SHEARN. And for the same grade at the same time?

Mr. BURNS. Yes, sir.

Mr. SHEARN. What difference have you noticed in the uniformity of the price during the last two or three years as compared with the eight or ten years preceding?

Mr. BURNS. Well, very little, except there has been very little market coal for the last two or three years; since the strike of 1900, it has been a question of getting coal for almost all during that time; we very often would pay a premium to brokers to enable us to get the coal.

817 Mr. SHEARN. Did you receive price circulars from any of these coal companies?

Mr. BURNS. Very frequently, yes.

Mr. SHEARN. What are the coal companies that sell coal here at tide water?

Mr. BURNS. Well, the ones who make a specialty of selling coal here, and make an effort to get the trade, are the Delaware & Hudson, the Ontario & Western, Limited, and the Erie Railroad; the Scranton and the Lehigh Valley don't cater much to this market.

Mr. SHEARN. But they have sales departments here?

Mr. BURNS. Yes.

Mr. SHEARN. And the Reading has a sales department here?

Mr. BURNS. Yes.

Mr. SHEARN. Now, you have received price circulars from some of these companies in the last two years?

Mr. BURNS. Generally they come in the mail; yes, sir.

Mr. SHEARN. At what time in the month do you generally receive the price circulars?

Mr. BURNS. Well, we only receive the one and that is on the 1st of April.

Mr. SHEARN. One on the 1st of April?

Mr. BURNS. Yes, sir.

818 Mr. SHEARN. And that gives the price for what period of time?

Mr. BURNS. Generally on the 1st of April they announce the price and then they give you a discount of 50 cents for one month, and ten cents additional each month until the 1st of September.

Mr. SHEARN. They announce a price for the year ahead or for the summer, which?

Mr. BURNS. For the summer; they never have carried it out yet, though.

Mr. SHEARN. After the 5th month has been reached the price remains; there is no further discount after the 5th month?

Mr. BURNS. I do not know, we never reached the 5th month without a strike, so I do not know what is the fact.

Mr. SHEARN. Are you not exaggerating a little?

Mr. BURNS. No, that is the truth.

Mr. SHEARN. There has been a strike on every year——

Mr. BURNS. Since the beginning of the understanding I have never seen the time——

Mr. SHEARN. What was the beginning of the understanding?

819 Mr. BURNS. I think it was two years ago.

Mr. SHEARN. But on the 1st of April in 1901, on the 1st or 2nd of April, 1901, you received through the mails a price circular?

Mr. BURNS. I do not remember that.

Mr. SHEARN. You know that is the time the circulars came out?

Mr. BURNS. That was the time we evidently received the circular.

Mr. SHEARN. But you know from your knowledge of the business that that is the time the circulars came out?

Mr. BURNS. If that is the time they began, that is true; I do not remember whether it is 1901.

Mr. SHEARN. Or 1900?

Mr. BURNS. I do not remember distinctly, or 1902.

Mr. SHEARN. But you know it was the case in 1900, don't you?

Mr. BURNS. No; I do not know it.

Mr. SHEARN. You remember it as the case last year?

Mr. BURNS. Well, they started in to do it last year; it was only one month before the strike came out.

Mr. SHEARN. Don't you recollect there were certificates the year before?

820 Mr. BURNS. I think there was and we had a strike then.

Mr. SHEARN. What time of the year did you receive the circular?

Mr. BURNS. The 1st of April.

Mr. SHEARN. From what companies?

Mr. BURNS. I declare I could not tell you.

Mr. SHEARN. Reading Coal & Iron Company?

Mr. BURNS. I think there was one from them, but I could not swear to it.

Mr. SHEARN. One from the Delaware, Lackawanna & Western?

Mr. BURNS. I am quite sure I never received one from them.

Mr. SHEARN. The Elk Hill Coal & Iron Company?

Mr. BURNS. Never heard of it.

Mr. SHEARN. From what company do you get coal; of the Ontario & Western?

Mr. BURNS. Dickson & Eddie.

Mr. SHEARN. You get from their sales agent?

Mr. BURNS. Their sales agent of that coal.

Mr. SHEARN. And the circulars for that company are issued by Dickson & Eddie?

821 Mr. BURNS. Yes, sir.

Mr. SHEARN. And theirs came out at the same time?

Mr. BURNS. I think so; yes sir.

Mr. SHEARN. What other companies?

Mr. BURNS. Williams & Peters received one from them also.

Mr. SHEARN. The Erie agents?

Mr. BURNS. Yes, sir.

Mr. SHEARN. Did you observe on each of these circulars the same monthly discount arrangement?

Mr. BURNS. Yes, sir; there is no disputing that.

Mr. SHEARN. Those circulars all reached you at the same time, didn't they?

Mr. BURNS. I presume so; yes, sir; about the same time.

Com'r PROUTY. How much coal do you handle in a year?

Mr. BURNS. About half a million ton, sir.

Mr. PROUTY. Is that largely domestic coal?

A. No, sir; it is made up of every kind—anthracite and bituminous, small and large.

Mr. PROUTY. Of what grade of anthracite coal do you handle the largest quantity?

822 Mr. BURNS. Well, I guess they are pretty evenly divided, wherever we can get it——

Com'r PROUTY. I am not talking about what you get; about what you sell.

Mr. BURNS. I am stating that is what I sell; whatever I can get; generally free-burning coal.

Com'r PROUTY. What do you mean by free-burning coal?

Mr. BURNS. Well, coal by the Erie, Pennsylvania, Susquehanna, or Ontario & Western.

Com'r PROUTY. That coal is prepared in different sizes?

Mr. BURNS. Yes, sir.

Com'r PROUTY. Of what size do you sell the most?

Mr. BURNS. We sell about fifty per cent of the small sizes, which are pea, buck, and smaller, and the other fifty of domestic sizes, broken, egg, stove, and nut.

Com'r PROUTY. Could you tell by an examination of your books the lowest price you have paid each year for the last ten years for some grades of coal?

Mr. BURNS. It would be a very difficult matter for that period; it could not be done.

823 The CHAIRMAN. Mr. Shearn, before we adjourn, I would like to consider the question of when future hearings in this case shall be held.

Mr. SHEARN. Next week, I am in hopes, sir.

The CHAIRMAN. Will you be prepared to go on on Monday?

Mr. SHEARN. I would prefer Tuesday.

The CHAIRMAN. Can you give us any idea of the length of time you will require for putting in your case?

Mr. SHEARN. Well, at the rate we have been going on, it would appear that it would take certainly eight days more or actual sessions. I hoped that we could finish all our side of the case in four or five days, but it has been impossible because of the objections that have, of course, very properly been made, to the questions, but we are coming now right up to the point of the examination of these books; and whether the books are going to be submitted for examination or not will of course determine very largely the immediate future of the hearings. Just as soon as the papers can be prepared, having completed the foundation that I deem

824 necessary, I shall make an application to one of the Federal judges designed to compel the respondent companies to answer the questions and produce the documents they refuse to produce. I hoped that that might be brought before the court on Friday of next week. I shall endeavor to bring that about. Now, then, when it comes to the matters of the books, if they would make up their minds as to whether they are going to let us see the books or not, of course we could accomplish very much more intelligently the planning of the future hearings.

Mr. CARR. If Mr. Shearn will indicate to the representatives of the different companies what he wants to get from their books I think we

might facilitate this matter very much. We certainly will object—at least, I speak for my own company—to any roaming examination into the books of the company; but if he will indicate to us what in our books he thinks he wants, I will see that it is taken from the books and verified in proper form, or any form the Commission may designate.

Mr. SHEARN. Well, that is absolutely out of the question; if it is going to be a matter of their copying page after page of these books we would have to ask them to copy, there would be no end to these
825 hearings. The best way about it is for them to produce their books here. Let one company produce the books called for on one day and another company the next day, and so on, so that they will not be materially inconvenienced.

Mr. KERR. I suggest that you say to us exactly what you want, and let the company submit the statements. If you have any doubt about their accuracy, of course, you would be at liberty to send some one down to the office of the company to verify it.

Mr. SHEARN. I want to see the entries of the transactions for the purchase of coal, and what you have paid for the coal, and then I want to see the entries that will show what, if anything, and to whom freight has been paid for the transportation of that coal, and I want to know how much is realized for the sale of that coal. In other words, I would like to take a given purchase of a thousand tons of coal, or five hundred tons of coal, and trace that through the books from start to finish.

Com'r PROUTY. I understand you refuse to produce the books of the coal company.

Mr. CAMPBELL. Anything the gentleman has been talking about appears on the face of the railroad books.

Mr. SHEARN. I suggest we begin with his company, then.

826 In the first place, I wish to examine the auditors, or the head bookkeepers, relative to the books that are kept and the method of keeping books, so that we will know what the books are and how many there are, what books to call for covering these periods, and then I desire to have the books produced, and to question the auditor and the head bookkeeper, and bring out what I desire to bring out.

Mr. CAMPBELL. That, I think, is the right way to do.

Com'r PROUTY. Couldn't you begin with some company whose books are here in New York?

Mr. SHEARN. Well, the Lehigh books are not here. I think the Erie books are. We might begin on the Erie, then.

The CHAIRMAN. Mr. Shearn, are you likely to want any books to-morrow?

Mr. SHEARN. No; I want the auditors to-morrow. Judge Campbell said he would have Mr. White here in the place of Mr. Jones.

Mr. CAMPBELL. I find Mr. White is not the man, but I will give you a substitute who has charge of the anthracite coal books.

827 Mr. SHEARN. But I want the man who has charge of the railroad books.

Mr. CAMPBELL. I am speaking of the railroad books.

Mr. SHEARN. And I want the man who has charge of the coal books.

Mr. CAMPBELL. You have not called for him. In view of the way the question has been raised, you do not want us to drag the books over here and drag them back again?

Mr. SHEARN. If the court please, we might leave the matter of hearings next week until to-morrow afternoon.

The CHAIRMAN. Let me say for the benefit of counsel that it is our present intention at the close of the session to-morrow afternoon to adjourn until Wednesday morning next week. We can not very well hold any sessions until Wednesday on account of other engagements.

Mr. CAMPBELL. I want to be very sure that you expect to examine Mr. Baer to-morrow. There is no use bringing him here unless you expect to use him.

Mr. SHEARN. Yes.

The Commission, then, at 4.30 p. m., adjourned to meet to-morrow at 10.30 a. m.

828 NEW YORK, N. Y., *April 24th, 1903—10.30 a. m.*

The CHAIRMAN. Mr. Shearn, you may proceed.

Mr. SHEARN. Is Mr. Baer in court?

Mr. CAMPBELL. He is expected here in a few moments; he is in town.

Mr. SHEARN. Is Mr. E. B. Sturgis in court?

(No response.)

Mr. SHEARN. Is Mr. J. J. Jermyn in court?

(No response.)

Mr. SHEARN. Or Mr. Joseph A. Jermyn?

(No response.)

Mr. SHEARN. Is the secretary of the Lehigh Valley Railroad Company or of the Lehigh Valley Coal Company here?

(No response.)

Mr. SHEARN. Mr. Jermyn has come in now; I will ask him to take the stand.

J. J. JERMYN, a witness called on behalf of complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Jermyn, where do you live?

829 Mr. JERMYN. Scranton, Pa.

Mr. SHEARN. What is your business?

Mr. JERMYN. Coal operator.

Mr. SHEARN. How long has that been your business?

Mr. JERMYN. All my life.

Mr. SHEARN. What companies are you connected with?

Mr. JERMYN. Why, a private company—Jermyn & Co.

Mr. SHEARN. What is the name of the company?

Mr. JERMYN. Jermyn & Co.

Mr. SHEARN. And you have been connected with that a great many years?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. And you are one of the owners of it?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. Jermyn & Co. mine coal and sell coal, do they?

Mr. JERMYN. They do.

Mr. SHEARN. In what region?

Mr. JERMYN. In the Lackawanna region.

Mr. SHEARN. What railroads do Jermyn & Co. ship its coal over?

830 Mr. JERMYN. New York, Susquehanna & Western.

Mr. SHEARN. Have you a contract with the New York, Susquehanna & Western for the purchase of coal?

Mr. JERMYN. Yes; we have.

Mr. SHEARN. Will you produce it?

Mr. JERMYN. I did not bring it with me.

Mr. SHEARN. You were subpœnaed to bring it, were you not?

Mr. JERMYN. It stated all contracts in 1901. We did not make any contract in 1901.

Mr. SHEARN. Was it not in existence in 1901?

Mr. JERMYN. Yes; but it was not executed.

Mr. SHEARN. That is the reason you have not brought it?

Mr. JERMYN. Yes, sir; because I was not asked for it; that is the way I understood it.

Mr. SHEARN. When was that contract entered into?

Mr. JERMYN. October, 1900, I think.

Mr. SHEARN. And because your subpœna called for contracts since January, 1901, and this was entered into in October, you failed to bring it?

Mr. JERMYN. Since January 1st, 1901, you say here (referring to subpœna).

831 Mr. SHEARN. On what basis do you sell your coal to the New York, Susquehanna & Western?

Mr. JERMYN. The price is the tide-water price here in New York.

Mr. SHEARN. What percentage of the tide-water price does the New York, Susquehanna & Western pay for your coal?

Mr. JERMYN. Sixty-five per cent on prepared sizes.

Mr. SHEARN. And that has been the arrangement since October, 1900?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. Look at this contract, Exhibit No. 23, and state whether that is the same as the contract between Jermyn & Co. and the New York, Susquehanna & Western?

Mr. BROWNELL. I did not hear all of this question, but if I understand it correctly, it is attempted to show by this witness the contents of the contract which he says he or his company have with the—I do not know what company it was.

Com'r PROUTY. New York, Susquehanna & Western.

Mr. BROWNELL. The New York, Susquehanna & Western—what?

832 Mr. SHEARN. Railroad Company.

Mr. BROWNELL. May I ask the witness a question? Mr. Jermyn, did you state that you had a contract with the New York, Susquehanna & Western Railroad Company?

Mr. JERMYN. Not with the railroad company; with the coal company.

Mr. BROWNELL. I thought so.

Mr. SHEARN. I understood him to say railroad company.

Mr. JERMYN. No; with the coal company.

Mr. BROWNELL. You misunderstood him.

Mr. SHEARN. Let me ask you another question, please. What company have you a contract with?

Mr. JERMYN. The New York, Susquehanna & Western Coal Company.

Mr. SHEARN. Over what road does that company ship its coal?

Mr. JERMYN. Over different roads, I suppose.

Mr. SHEARN. Is your contract with the New York, Susquehanna & Western Coal Company one for the purchase of your coal on the basis of sixty-five per cent of the tide-water price on prepared sizes?

833 Mr. BROWNELL. Just one moment before the answer is made. If your honors please, I object to the question as incompetent, immaterial, and irrelevant to the issues which are being tried here. That is not competent. It is asking for the contents of a written contract where there appears to have been no effort on the part of the petitioner to produce the written agreement, and evidence of this character would seem under the rules of evidence with which I have any familiarity at all to be incompetent and improper. I appreciate that your honors are not bound by all of the strict rules of evidence, but I understand that the ordinary basic principles are followed. I think what is now asked for would be allowing altogether too much latitude for an orderly investigation. I do not and can not appreciate any reason why questions of this character, as to the contents of a contract of this kind, should be permitted without any effort whatever having been made to produce it, or to have the witness produce the original.

Mr. SHEARN. I take it that the lack of effort would not be the reason for asking to exclude this question. We have made an effort. That is,

834 this contract was dated a few days in advance of this subpœna, and if the court rules against me, it will necessitate the witness coming down here again. The objection is rather late, however, because he has already testified what the substance of the contract was.

Com'r FIFER. Didn't you know what contract was wanted when this subpœna was served on you?

Mr. JERMYN. No, sir.

Mr. SHEARN. What contract did you think was wanted?

Mr. JERMYN. We didn't have a contract of the kind asked for.

Mr. FIFER. Have you more than one contract in your possession?

Mr. JERMYN. No, sir; that is the only one I have.

Com'r FIFER. Would you not naturally suppose that that would be the contract they wanted?

Mr. JERMYN. If they had asked for it I would have brought it with me. I had no reason to want to keep it.

Mr. SHEARN. I ask the clerk to show the Commission the subpœna.

The CHAIRMAN. Let him read it.

The subpœna referred to was here read by the assistant secretary of the Commission, Martin S. Decker.

835 Mr. SHEARN. Well, I won't waste any more time on that, if there is to be nothing but a continuation of the obstructive tactics. I ask the stenographer to read what was said by the witness with reference to the sale of his company's coal.

The CHAIRMAN. He states there was such a contract made in October, 1900.

Mr. JERMYN. November 1st, 1900.

Mr. SHEARN. Between your company and the New York, Susquehanna & Western Coal Company?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. And when you said railroad company, you were in error?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. But your answers were correct in other respects except that you used "railroad company" instead of "coal company?"

Mr. JERMYN. Yes, sir.

Mr. SHEARN. Now, look at the exhibit I showed you before, and see if that is a true copy of the contract?

Mr. BROWNELL. I renew my objection.

836 The CHAIRMAN. We think the objection is well taken. Mr. Jermyn, you didn't bring the contract of November 1st, 1900, with you?

Mr. JERMYN. No, sir.

The CHAIRMAN. Have you any objections to producing it?

Mr. JERMYN. No, sir; I do not know that I have.

Com'r FIFER. Will you produce it without further subpœna?

Mr. JERMYN. I suppose so. I have no objection to producing it.

Mr. SHEARN. Will you produce it without further subpœna?

Mr. JERMYN. Yes.

Mr. SHEARN. Very well.

The CHAIRMAN. Let us dispose of this matter. We understand witness to say that he has no objection to producing the contract and perhaps some arrangement could be made to avoid bringing the witness here again.

Mr. SHEARN. Can you send a copy of it?

Mr. JERMYN. Yes, sir; I will.

837 Mr. SHEARN. Will you send it to Mr. Martin S. Decker, the clerk of the Commission—a true copy?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. Did you ever hear of a company called the New York, Wyoming & Western Company?

Mr. JERMYN. Yes, sir; I did.

Mr. SHEARN. When?

Mr. JERMYN. I can not remember exactly; three or four years ago, maybe more.

Mr. SHEARN. Was it before or after the sale of Simpson & Watkins's collieries to the Temple Iron Company that you heard of it first?

Mr. JERMYN. I think it was before.

Mr. SHEARN. Where was that company to operate from?

Mr. JERMYN. I do not know. That was pretty hard to tell. It was talked about operating from the Lackawanna regions to tidewater. I do not know exactly where it was coming in.

Mr. SHEARN. Who was the president of that company? Was it Mr. E. D. Sturges?

Mr. JERMYN. I think it was; I almost forget. I think it was Mr. Sturgis.

838 Mr. SHEARN. Did Germyn & Co. have anything to do with that project?

Mr. JERMYN. Oh, yes; we were in it.

Mr. SHEARN. Did you subscribe for part of the capital stock of that company?

Mr. JERMYN. I did.

Mr. SHEARN. Did you pledge the output of your mine to that company, if it was thereafter constructed?

Mr. JERMYN. Part of it we did.

Mr. SHEARN. How large a part of it?

Mr. JERMYN. Probably fifty per cent of it.

Mr. SHEARN. How many of the independent operators in your region were actively interested in that projected railroad?

Mr. JERMYN. I think the greater majority of them; I do not remember exactly.

Mr. SHEARN. Was the firm of Simpson & Watkins active in it also?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. Do you know what the output of the Simpson & Watkins collieries was at that time?

Mr. JERMYN. I do not.

839 Mr. SHEARN. Over a million tons, was it not?

Mr. JERMYN. I could not say.

Mr. SHEARN. Do you recollect the sale of the Simpson & Watkins collieries to the Temple Iron Company in 1899?

Mr. JERMYN. I know they made a sale, but do not know the exact date.

Mr. SHEARN. Were they active in this attempt to build this New York, Wyoming & Western Railway?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. The road was not built, was it?

Mr. JERMYN. No, sir.

Mr. SHEARN. Did you have anything to do with the projected railroad known as the Delaware Valley and Kingston?

Mr. JERMYN. No, sir.

Mr. SHEARN. You were not connected with that at all?

Mr. JERMYN. I knew nothing about it.

Mr. SHEARN. Prior to 1898, on what basis did you sell your coal to the New York, Susquehanna & Western Coal Company?

Mr. JERMYN. Well, I can not say now. I think it was fifty-five. I am not sure about that.

840 Mr. SHEARN. Immediately prior to November, 1900, when this new contract of yours was made, on what basis were you selling your coal to that company?

Mr. JERMYN. I believe it was on fifty-five per cent.

Mr. SHEARN. Fifty-five?

Mr. JERMYN. I think so; as nearly as I can remember.

Mr. SHEARN. Do you know on what basis the independent operators throughout that region generally were selling their coal to different coal companies in 1899?

Mr. JERMYN. Some for fifty and some fifty-five. I can not tell exactly.

Mr. SHEARN. Was there general dissatisfaction with that price among the operators in 1898, 1899, and 1900?

Mr. JERMYN. There naturally would be.

Mr. SHEARN. You did not consider you were getting enough for your coal?

Mr. JERMYN. No.

Mr. SHEARN. You thought you were paying too much for freight? You are nodding your head. Do you say yes?

Mr. JERMYN. Yes.

841 Mr. SHEARN. What do you know about the organization of a committee of three, made up of Mr. M. S. Kemmerer, Mr. William Connell, and Dr. F. M. Hough, representing the independent operators in 1901, to negotiate a new contract with the presidents of the coal roads?

Mr. JERMYN. I do not remember anything about that.

Mr. SHEARN. You were not present at any of those conferences?

Mr. JERMYN. No.

Mr. SHEARN. On what basis are a majority of the independent operators in your region now selling their coal to the coal companies?

Mr. JERMYN. Sixty-five per cent of the tidewater price on prepared sizes.

Mr. SHEARN. Under contract whereby they agree to turn over the future output of their respective mines?

Mr. BROWNELL. I object to that on the same ground.

Mr. SHEARN. Does the New York, Susquehanna & Western Coal Company render you monthly statements of the prices realized on your coal at tidewater?

Mr. JERMYN. Yes, sir; by vouchers.

842 Mr. SHEARN. Have you produced those monthly reports?

Mr. JERMYN. I can not produce them because the voucher is made so that the check is under it, and when I sign the check it goes back.

Mr. SHEARN. Into their possession?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. They do not render you a monthly statement independent of the voucher?

Mr. JERMYN. No, sir. Not independent of the voucher.

Mr. SHEARN. What have you been realizing for the sale of your coal to New York, Susquehanna & Western Coal Company on prepared sizes on the average since this contract was entered into?

Mr. BROWNELL. I object to that on the same ground. The testimony is improper and immaterial.

The CHAIRMAN. The objection is overruled.

Mr. SHEARN. Answer the question, please.

Mr. JERMYN. Sixty-five per cent of the tidewater price for prepared sizes; fifty for pea coal and forty for buckwheat.

Mr. SHEARN. Do you recollect the prices prevailing at tidewater in the month of April, 1902?

843 Mr. JERMYN. About five dollars.

Mr. SHEARN. Five dollars?

Mr. JERMYN. About five dollars, or a little less.

Mr. SHEARN. What were the prices prevailing in May, 1902?

Mr. JERMYN. They averaged around about five dollars; sometimes a little under and sometimes a little over.

Mr. SHEARN. How about the prices in April and May, 1901?
Mr. JERMYN. I can not remember those prices.
Mr. SHEARN. You can not remember back as far as that?
Mr. JERMYN. No, sir.
Mr. SHEARN. Don't you know that in April and May, 1901, the average price on prepared sizes was four dollars?
Mr. JERMYN. I can not remember the prices.
Mr. SHEARN. Well, what is your best recollection?
Mr. JERMYN. I said around four dollars.
Mr. SHEARN. In April and May, 1901?
Mr. JERMYN. I can not say; it averaged that.
Mr. SHEARN. Was it not higher in 1902 than in 1901?
Mr. JERMYN. I can not remember that without the vouchers, and I have not got them.
844 Mr. SHEARN. What do you say were the prices in April and May, 1900?
Mr. JERMYN. They were lower, I believe, because we did not get as big a percentage.
Mr. SHEARN. What was the price prevailing in April and May, 1900?
Mr. JERMYN. I can not remember.
The CHAIRMAN. It is hardly necessary to examine the witness on that point. There is some way to establish those prices.
Com'r PROUTY. How long have you been mining coal?
Mr. JERMYN. All my life.
Com'r PROUTY. How long have you been operating the same mine?
Mr. JERMYN. Where we are now?
Com'r PROUTY. Yes, sir.
Mr. JERMYN. About sixteen years, I think.
Com'r PROUTY. Can the coal from that mine go to market over any road beside the New York, Susquehanna & Western?
Mr. JERMYN. Yes, sir; it can.
Com'r PROUTY. Which other road?
845 Mr. JERMYN. By the Lehigh Valley, the D., L. & W., and the New York, Susquehanna & Western.
Com'r PROUTY. There are three roads, then, by which you can ship to market?
Mr. JERMYN. Yes, sir.
Com'r PROUTY. And would the rate by all those lines to tidewater be the same?
Mr. JERMYN. They all get about the same price.
Com'r PROUTY. And you can get to one road as easy as to another?
Mr. JERMYN. Yes, sir.
Com'r PROUTY. So it is not material to you, so far as your convenience is concerned, by which road the freight goes?
Mr. JERMYN. No, sir.
Com'r PROUTY. How long is it since you sold your output to the coal companies?
Mr. JERMYN. We have always sold to the coal companies.
Mr. PROUTY. Now, why do you handle your coal in that way, rather than handle it yourself?
Mr. JERMYN. I prefer to handle it that way, so far as I am concerned.

846 Com'r PROUTY. You think you make more money out of it?

Mr. JERMYN. We do not run so much risk; we do not have so many bad debts; we get our money.

Com'r PROUTY. Is there any other objection to handling the coal yourself?

Mr. JERMYN. That is the only objection I have.

Com'r PROUTY. You say you have always sold to the coal company?

Mr. JERMYN. Yes, sir.

Com'r PROUTY. And have always sold to this same coal company?

Mr. JERMYN. Oh, no. We have sold to different companies. We have sold some to the Delaware & Hudson, to the Lackawanna, and to the Lehigh Valley—some to it—at different times.

Com'r PROUTY. How long since you sold your entire product to one coal company?

Mr. JERMYN. A couple of years, I think; a couple or three.

Com'r PROUTY. Going back eight or ten years, did the price—

847 there has always been an established price at tide water?

Mr. JERMYN. A certain percentage of the tide-water price.

Com'r PROUTY. Have the railroad companies or the coal companies always had an established price at tide water? Has it been understood that coal was to be sold in May for so much at tide water?

Mr. JERMYN. Not that I know of.

Com'r PROUTY. Is that understood now?

Mr. JERMYN. I could not say.

Com'r PROUTY. Does your coal all go to tide water?

Mr. JERMYN. The majority of it.

Com'r PROUTY. It might go to Buffalo?

Mr. JERMYN. Yes, sir; or go anywhere.

Com'r PROUTY. But if it went to Buffalo, you would get your per cent of the tide-water price?

Mr. JERMYN. Yes, sir; that is the way our contract would be.

Com'r PROUTY. Have you ascertained what the tide-water price is?

Mr. JERMYN. We have the prices sent to us every month.

848 There is a man appointed to take the average of the prices and send them to us.

Com'r PROUTY. Who sends you the prices every month?

Mr. JERMYN. I think his name is Mr. Ruley.

Com'r PROUTY. And you say that price is an average price at tide water?

Mr. JERMYN. That is the price they give us for the average price.

Com'r PROUTY. And you understand that is the average price at which sales are actually made?

Mr. JERMYN. We suppose so; yes.

Com'r PROUTY. Who selected this man that makes this report to you as to the tide-water price?

Mr. JERMYN. He is selected by the operators and the different coal companies.

Mr. BROWNELL. Did you know Mr. Ruley, who sent the reports, is in the employ of the United States Government as a statistician, in charge of these reports?

Mr. JERMYN. I did not; no, sir.

Mr. BROWNELL. Mr. Jermyn, what tracks lead to your breakers?

Mr. JERMYN. Well, the Lackawanna, the Lehigh Valley, and the New York, Susquehanna & Western.

849 Mr. BROWNELL. Do you own the tracks yourself at the breaker or are they owned by one or all of these companies?

Mr. JERMYN. We own part of the tracks and the companies own part.

Mr. BROWNELL. Is it not a fact that there is only one railroad company that owns tracks that lead directly to the breakers, and that the other companies reach your breakers only by passing over them?

Mr. JERMYN. No; they can reach our breakers by passing over our own switches.

Mr. BROWNELL. Do they all reach all of your breakers?

Mr. JERMYN. I say they can. They do not.

Mr. BROWNELL. How many breakers have you?

Mr. JERMYN. Two.

Mr. BROWNELL. And each of these breakers is reached independently by the rails of the several companies?

Mr. JERMYN. Our No. 1 breaker can be reached by the Lehigh Valley and the Lackawanna, and our No. 2 breaker can only be reached by the New York, Susquehanna & Western.

Com'r PROUTY. Why do you sell now to the New York, Sus-

850 quehanna & Western Company rather than to the Lehigh Valley, say?

Mr. JERMYN. Why do we?

Com'r PROUTY. Yes, sir.

Mr. JERMYN. Because we made a contract with them and are perfectly satisfied.

Com'r PROUTY. How did you happen to make a contract with them rather than with the Lehigh Valley?

Mr. JERMYN. We have always sold coal to the Susquehanna.

Com'r PROUTY. Did the Lehigh Valley make any attempt to contract for your coal?

Mr. JERMYN. No.

Com'r PROUTY. And it didn't make any difference to you so long as you got sixty-five per cent from whom you got it?

Mr. JERMYN. No, sir.

Mr. BROWNELL. How long have you and your family owned the coal which you are now mining?

Mr. JERMYN. I think it is about sixteen years since we opened it.

Mr. BROWNELL. And when you first opened it did you market the coal yourself at New York and other destinations or did you sell it?

Mr. JERMYN. We never marketed it ourselves.

851 Mr. BROWNELL. When you began to mine, you sold to what company?

Mr. JERMYN. New York, Susquehanna & Western Coal Company.

Mr. BROWNELL. To the New York, Susquehanna & Western Coal Company?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. And have never found any reason to change or discontinue the sale to that company?

Mr. JERMYN. No; I have no reason to complain.

Mr. BROWNELL. And no reason to look for other purchasers?

Mr. JERMYN. No, sir.

Mr. BROWNELL. You have had the selling price increased from time to time?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. And you have been able to reach an amicable arrangement with them for them selling?

Mr. JERMYN. Yes, sir; it has always been satisfactory.

Mr. BROWNELL. During the time mentioned has there been an increase in wages of the men—that is, of the miners?

Mr. JERMYN. Oh, yes.

852 Mr. BROWNELL. There have been several such increases?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. Was one of those increases shortly prior to the change in the selling price of coal that you have just mentioned; that is, before or in the fall of 1900, there was a considerable increase at that time?

Mr. JERMYN. Yes, sir; I think about ten per cent, if I remember right.

Mr. BROWNELL. Ten per cent generally in the prices of labor?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. And was that increase shortly after followed by a request for an increase in the price of coal?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. And that request was granted?

Mr. JERMYN. Yes, sir.

Com'r PROUTY. Mr. Jermyn, how much do you think the increase of ten per cent in wages increased the cost of mining coal per ton?

Mr. JERMYN. Quite a bit more than the ten per cent.

Com'r PROUTY. It increased it more than ten per cent?

Mr. JERMYN. Yes, sir.

853 Com'r PROUTY. Mr. Brownell, I understood him to say that he at times sold to other companies than your company.

Mr. BROWNELL. Yes, sir. Mr. Jermyn, have you at times sold part of your output to companies or persons other than the New York, Susquehanna & Western Coal Companies?

Mr. JERMYN. We sold some to the Lackawanna, and to the Lehigh Valley some.

Mr. BROWNELL. From the collieries reached by those companies?

Mr. JERMYN. Yes, sir; that was several years ago, though.

Mr. BROWNELL. Is it not a fact that before you purchased the coal which you are now mining that the properties were owned by the Susquehanna Coal Company, in whole or in part?

Mr. JERMYN. The greater part of it was; yes, sir.

Mr. BROWNELL. And at the time that company sold the coal to you, or sold the leasehold interest and you began to mine the coal, you sold the mine product to this coal company from which you had obtained your coal rights in the lands?

854 Com'r CLEMENTS. What is the output of your mines a year?

Mr. JERMYN. Well, about 500,000 or more. We could ship more if we could get the men to work and attend to business; if they would attend to their work a little better.

Com'r CLEMENTS. Do you get out all you can? Do you run your mines to the full capacity?

Mr. JERMYN. No, sir.

Com'r CLEMENTS. Why?

Mr. JERMYN. Because we can not get the men to stay there and do their work.

Mr. CLEMENTS. Have you ever produced more than you now?

Mr. JERMYN. Yes, sir.

Com'r CLEMENTS. In what year?

Mr. JERMYN. I can not remember.

Com'r FIFER. What is the output of your mine?

Mr. JERMYN. I think they could run up to the capacity; that we could run up to 600,000 tons.

Com'r FIFER. What limits the output?

855 Mr. JERMYN. We can not get the men to stay at their work nowadays; they are running our business for us; we can not run it ourselves now.

Mr. BROWNELL. Is it not a fact that during the past two years there has been a market demand for all the coal that you could produce if you could get it out?

Mr. JERMYN. The last two years?

Mr. BROWNELL. The last two or three years; that is, if you could get it out.

Mr. JERMYN. Yes, sir; we could get out more if the men would have worked.

Mr. BROWNELL. If the men had worked as you desire to have them, you would and could have mined more?

Mr. JERMYN. Certainly.

Mr. BROWNELL. And the coal company was ready to take the coal?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. And the railroads reaching there were ready to transport it?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. Is it not a fact that many days when cars were there ready and you desired to mine, that the miners, both inside men

856 and those working outside would not work?

Mr. JERMYN. Yes, sir; they would not work their full time; they would get tired and go home.

Mr. BROWNELL. Was it not a fact that contract miners would not work more than three or four hours a day?

Mr. JERMYN. Yes, sir; there are lots of them that won't work more than that.

Mr. BROWNELL. Have you succeeded in getting them to any extent, even when the demand for coal was greatest, to work as much as seven or eight hours a day—contract miners?

Mr. JERMYN. They do not average over six, I think.

Mr. BROWNELL. When the demand for coal was greatest, and the public was suffering for coal, were you able then to get the contract miners to work and produce coal to the extent of your ability to mine it, and of the roads to transport it?

Mr. JERMYN. We could have shipped a good deal more if they had stayed and done the work.

Mr. BROWNELL. Is it not a fact that you are often prevented from mining the amount of coal which you could sell and the railroads transport by reason of the breaker boys or outside men, or other miners
857 refusing to work because of some trivial reason?

Mr. JERMYN. We lost three days this month by the boys stopping.

Mr. BROWNELL. How old are the boys who stopped the operation of your breaker?

Mr. JERMYN. Fourteen years old and up.

Mr. BROWNELL. What was the occasion for their stopping?

Mr. JERMYN. We wanted them to work certain hours and they wanted to quit on certain hours.

Mr. BROWNELL. How many hours did you want them to work in a day? Did you want them to work more than nine hours a day?

Mr. JERMYN. No, sir.

Mr. BROWNELL. Were they willing to work as much as nine hours a day?

Mr. JERMYN. We had this trouble because we wanted them to work until half past four and they wanted to quit at four.

Mr. BROWNELL. And so that tied up your breaker and mine?

Mr. JERMYN. Yes, sir; three days.

Mr. BROWNELL. And what is the output of that breaker a day?
858 Mr. JERMYN. 1,200 tons a day.

Mr. BROWNELL. So the production of 3,600 tons of coal was stopped or prevented because of that trouble?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. Are there frequent occurrences of that kind which reduce the output of your collieries?

Mr. JERMYN. That is about the only thing since we started to work again.

Mr. BROWNELL. Since you started in the last—how many months ago?

Mr. JERMYN. Since the strike was off.

Mr. BROWNELL. Since the strike was ended?

Mr. JERMYN. Yes, sir; but we have had other little ones that we do not count.

Mr. BROWNELL. Have you during the last year had a number of things occur by which the output of the mine was restricted; by refusal of the men to work parts of the day or several days at a time?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. And you attribute to those causes in large degree the reason why your output at your mine has been restricted under what it would have otherwise been?
859 Mr. JERMYN. Yes, sir.

The CHAIRMAN. In other words, has the output of your collieries been limited in any way at any time by this contract of this company with the coal company?

Mr. JERMYN. Do you mean by that, have we lost any time on account of the railroad company?

The CHAIRMAN. No, sir. Has this contract with the coal company, which you made in November, 1900, operated in any way to limit the output of your collieries?

Mr. JERMYN. I do not understand exactly. You mean, have we lo
on account of shortage of cars?

The CHAIRMAN. Has your output been limited by reason of any pr
vision in that contract?

Mr. JERMYN. I do not think so.

The CHAIRMAN. That is all there is of it, Mr. Brownell?

Mr. BROWNELL. Yes, sir. I understand that the New York, Susqu
hanna & Western Coal Company that buys his coal don't restrict t
output. He has told pretty plainly, restricts it.

860 Mr. SHEARN. Who controls the amount of coal which yo
mine may put forth in any given month or given year?

Mr. JERMYN. I do not know that anybody does.

Mr. SHEARN. You have nothing to say about it, have you?

Mr. JERMYN. I think we have something to say about it.

Mr. SHEARN. Under your contract?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. Is not your output determined by the number of ca
sent there by the railroad company?

Mr. JERMYN. Certainly, if we do not get cars we can not load t
coal.

Mr. SHEARN. And your contract does not provide that the railro
company will take all the coal you mine?

Mr. BROWNELL. I object to the assumption that the contract provid
that the railroad company shall take any coal.

Mr. SHEARN. That the coal company shall take all of your coal?

Mr. JERMYN. I can not remember what is in that contract.

Mr. BROWNELL. I object to going into the contents of t
contract.

861 Mr. SHEARN. Does not the coal company simply agree to pu
chase a just proportion of all the anthracite coal which t
requirements of the market may from time to time demand?

The CHAIRMAN. That is overruled. The contract is not here.

Mr. SHEARN. You were restricted by shortage of cars?

Mr. JERMYN. The market has a good deal to do with the output.
we could sell it, and we could get plenty of cars, we can ship it,
course.

Mr. SHEARN. And the only indication you have of that is the sho
ness of cars. In other words, there have not been enough cars to ta
away the amount of coal that you had to deliver?

Mr. JERMYN. They supply us pretty well with cars.

Mr. SHEARN. What do you mean by the shortage of cars?

Mr. BROWNELL. I think counsel misrepresents it.

862 Mr. SHEARN. What did you say about the shortage of c
having anything to do with limiting it?

Mr. JERMYN. I said when we can not get cars we can not ship co

Mr. SHEARN. Has that been recently?

Mr. JERMYN. Not very often. We have no reason to complain of t
way they have treated us.

Mr. SHEARN. You are satisfied?

Mr. JERMYN. Yes, sir.

Mr. SHEARN. These breaker boys were not satisfied?

Mr. JERMYN. I do not think you could satisfy them.

Mr. SHEARN. How old were these breaker boys who were complaining?

Mr. JERMYN. From fourteen years up.

Mr. SHEARN. How far up?

Mr. JERMYN. We have some in the breakers forty or fifty years old picking slate.

Mr. SHEARN. Do you call those breaker boys?

Mr. JERMYN. Yes, sir.

863 Mr. SHEARN. What time do those forty-year-old breaker boys go to work in the morning?

Mr. JERMYN. We wanted them to go to work at seven, but they did not want to go until 7.30.

Mr. SHEARN. You have nothing to say as to the destination of the coal you mine, have you?

Mr. JERMYN. No, sir; we sell it at the mine.

Mr. SHEARN. You have nothing to say as to the price you shall get for the coal?

Mr. JERMYN. We have a price agreed upon with them with which we are satisfied.

Mr. SHEARN. You have an agreement for a percentage, but you have nothing to say as to the price your coal out of your mine shall bring, have you?

Mr. JERMYN. Why, yes; we get 65 per cent of the price.

Mr. SHEARN. At tide water?

Mr. JERMYN. Yes, sir.

864 Mr. SHEARN. Have you anything to say or any control over the price at tide water?

Mr. JERMYN. Well, I do not know that we have.

Mr. SHEARN. You know that you have not, don't you?

Mr. JERMYN. No; we have not.

Mr. SHEARN. You have no say?

Mr. JERMYN. No.

Mr. SHEARN. You have no say about the output, the destination, or the price?

Mr. JERMYN. We do not care anything about the destination. They buy it of us at the breaker. It don't make any difference to us where they ship it to.

Mr. SHEARN. You have nothing to say about the output, the destination of your coal, or as to the price it shall bring. Is that correct?

Mr. JERMYN. Not altogether.

Mr. SHEARN. In what respect is it incorrect?

Mr. BROWNELL. He has stated.

Mr. SHEARN. I object to counsel helping the witness out.

Mr. BROWNELL. I am not.

Mr. SHEARN. Then don't interrupt him. I will ask the stenographer to repeat the question.

(The question was repeated by the stenographer.)

Mr. BROWNELL. I think it is an improper question.

865 The CHAIRMAN. Is that not a question of the construction of the terms of the contract?

Mr. SHEARN. I would like to have the question answered if there is no legal objection to it. Here is the owner of a great mining interest, putting out 500,000 tons a year, annually, and I would like to know whether he has anything to say about the output of his mine and the destination of his coal or the price at which his coal is selling. I do not care whether it is under contract or whether it is a matter of fact; there may be some other arrangement, some modification of the contract.

The CHAIRMAN. I think that is a fair question and that the witness should answer it.

Mr. BROWNELL. I object to it as incompetent, immaterial, and improper, calling for the contents and calling for the construction of these contracts.

The CHAIRMAN. No; he is asking for the fact, whether in fact he has any control over the destination or output or the price of coal.

Mr. BROWNELL. He has stated the facts in regard to that.

866 Com'r FIFER. This question goes to the conduct of the business, how it is carried on.

The CHAIRMAN. You may answer the question.

Mr. JERMYN. I will have to answer it no.

Mr. SHEARN. If you were marketing your own coal, Mr. Jermyn, you would have to pay the cost of selling at tide water, wouldn't you?

Mr. JERMYN. I don't wan't to market my own coal.

Mr. SHEARN. I say, if you were you would have to do so.

Mr. JERMYN. I do not know anything about that. We never market our own coal.

Mr. SHEARN. You would also have to stand the items of waste, wouldn't you, and damage?

Mr. JERMYN. I suppose so; but I do not know anything about it, because we never done anything of that kind.

Mr. SHEARN. You say that the increase of ten per cent in wages has more than increased the cost of producing coal?

Mr. JERMYN. Yes.

Mr. SHEARN. Has increased the cost of coal more than ten per cent?

Mr. JERMYN. Yes.

867 Mr. SHEARN. The wage element, of course, is less than the total cost of producing coal—the wage element is not the entire cost?

Mr. JERMYN. No; not by any means.

Mr. SHEARN. And the ten per cent——

Mr. JERMYN. They won't do as much work for their money now as they did before; they won't load our coal as clean as they did before, and they do just as they please.

Mr. SHEARN. You do not mean to say, then, that it is the ten per cent increase that has operated to increase the cost?

Mr. JERMYN. Why, certainly. We can't get them to load our coal clean; we do not get what is just and due to us.

The CHAIRMAN. You mean, then, as a matter of actual experience, the increased cost has been more than the increase of ten per cent in wages?

Mr. JERMYN. Yes, sir; a great deal more.

Mr. SHEARN. That there has been more than an increase of ten per cent since that took place?

Mr. JERMYN. Yes; there has been another—yes, twenty.

868 Mr. SHEARN. Now, as to this Mr. Ruley—I want to get that name correct—who makes these reports to you——

Mr. JERMYN. I don't know him.

Mr. SHEARN. Will you spell his name?

Mr. JERMYN. I think it is R-u-l-e-y.

Mr. SHEARN. Where is his place of business?

Mr. JERMYN. I think it is in New York City; I am not positive about it.

Mr. SHEARN. Is that the Ruley of Alden & Ruley, that get up the maps of the coal regions?

Mr. JERMYN. I do not know that at all, sir.

Mr. SHEARN. Do you know what is his first name?

Mr. JERMYN. No; I do not remember.

Com'r PROUTY. Do you understand that this price of 65% is the price at which the coal company that you sell to markets its coal, or the price at which all this coal is marketed at tide water?

Mr. JERMYN. This is the average price.

Com'r PROUTY. At which all coal is marketed?

Mr. JERMYN. Well, we are only figuring on our own. I do not know anything about the others.

Com'r PROUTY. And you understand that this man makes the actual sales of your company—what is it——

Mr. JERMYN. Susquehanna & Western Coal Company; he gives us the prices.

869 Com'r PROUTY. And then it is the price received by your company?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. Mr. Jermyn, you know that there is a market price for coal whether you have knowledge of what the price is from day to day or not?

Mr. JERMYN. Well, that depends on the market, I suppose; the demand for it.

Mr. BROWNELL. The price, as you understand, varies with the demand and other things, but there is from day to day a price at which the coal sells, a market price, just the same as there is a market price for wheat?

Mr. JERMYN. Yes, sir.

Mr. BROWNELL. You use wheat, but you do not control the market price of wheat, I suppose?

Mr. JERMYN. No.

Mr. BROWNELL. You do not control the market price of coal, do you?

Mr. JERMYN. No.

Mr. BROWNELL. But you are satisfied to take what is to you a satisfactory proportion of the market price of coal?

Mr. JERMYN. Yes, sir.

870 Mr. BROWNELL. For your coal?

Com'r PROUTY. That is what we are trying to get at, whether the 65 per cent is the published market price or the 65% of the actual sale made by the coal company at tide water. He seems to understand you get 65% of the actual sales made by your company.

Mr. BROWNELL. You are satisfied with the percentage of the market price you do get, are you not?

Mr. JERMYN. Yes; we have no reason to complain.

Mr. BROWNELL. And you get reports of that market price?

Mr. JERMYN. Yes.

Mr. BROWNELL. Sometimes you are unable to produce coal by the breaker being out of repair?

Mr. JERMYN. Once in a while; yes; we have accidents, some breakage or other.

Mr. BROWNELL. Shut down from the various causes you have described, is that so?

Mr. JERMYN. Yes; that is right.

Mr. BROWNELL. And that, of course, affects your output; you sometimes close down yourself, do you not?

Mr. JERMYN. Sometimes we have a breakage, and we have to close down for a day or part of a day.

871 Mr. BROWNELL. Can you not yourself control how much coal you will mine subject to the interruptions you have spoken of?

Mr. JERMYN. Well, not altogether.

Mr. BROWNELL. What is there to prevent your controlling your own output?

Mr. JERMYN. A good many times we are short cars or we would load more; then sometimes it is the men.

Mr. BROWNELL. What else?

Mr. JERMYN. Once in a great while we have a breakdown, and that delays—machinery breaks.

Mr. BROWNELL. With those exceptions you control the output yourself, do you not—hire just as many men as you want?

Mr. JERMYN. Yes; as far as that is concerned.

Mr. BROWNELL. There is no coal company or railroad company that dictates how many men you shall employ or how much coal you shall take out?

Mr. JERMYN. No, sir.

Mr. BROWNELL. That is right, isn't it?

Mr. JERMYN. Yes.

Mr. BROWNELL. Now, you know how many men you employ better than the coal company and how much coal you are going to take

872 out in a given day or two or three days in advance?

Mr. JERMYN. Oh, yes.

Q. Do you give notice to any of the railroad companies as to how many cars of coal, or how many coal cars you will be apt to need and call for cars?

Mr. JERMYN. We telephone generally to headquarters and tell them how many cars we need for to-morrow or next day, say that we need so many cars.

Mr. BROWNELL. That is, knowing what your output is going to be, probably, you call upon the railroad companies to give you so many cars?

Mr. JERMYN. They want to know how many cars of coal we are going to load every day, so as to keep track of it.

Mr. BROWNELL. And you generally get the number of cars you need for the purpose?

Mr. JERMYN. As a general thing; sometimes we do not.

Com'r PROUTY. We have heard something in this case about the rated capacity of your colliery——

Mr. JERMYN. Well, the rated capacity is all the coal you can get through, all the ways from one thousand to fifteen hundred or eighteen hundred, according to what you can put through.

873 Com'r PROUTY. Isn't there some sort of a standard by which the capacity of your colliery is compared with the capacity of other collieries, and it is understood you are to produce about so much coal per year?

Mr. JERMYN. Not that I know of; no, sir.

Mr. SHEARN. Don't you know, Mr. Jermyn, whether this 65 % you get is 65 % of the prices realized on the sale of the coal that you sell to the New York, Susquehanna & Western Coal Company, or whether it is 65 % on prepared sizes of coal, all coal sold during that month at tide water?

Mr. BROWNELL. If this calls for the contents of the contract I object to it.

The CHAIRMAN. I understand he asks for the fact.

Mr. SHEARN. As a fact. Do you know as a fact whether the 65 % that you get for the prepared sizes of your coal is 65 % of the prices realized by the sale of your coal by the New York, Susquehanna & Western Railroad Company at tide water or is 65 % of the average prevailing price of prepared sizes of coal at tide water?

Mr. JERMYN. I think it is 65 % of the general average.

Mr. SHEARN. That is your understanding?

Mr. JERMYN. Yes.

874 Mr. BROWNELL. It is governed by your contract, is it not?

Mr. JERMYN. Yes.

Mr. BROWNELL. Whatever the fact is, it is as the contract provides?

Mr. JERMYN. It is in the contract and I do not remember all the details of it now.

The CHAIRMAN. If there are no further questions, Mr. Jermyn is excused. Kindly send a copy of that contract, Mr. Jermyn, to the secretary of the Commission.

875 GEORGE F. BAER, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. You are the president of the Reading Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. And have been how long?

Mr. BAER. April, 1901.

Mr. SHEARN. Prior to April, 1901, were you in any manner connected with the Reading Company?

Mr. BAER. I was general counsel and director.

Mr. SHEARN. For how long were you a general counsel and director prior to April, 1901?

Mr. BAER. Well, I can not divide off the periods of time, but in a general way I have been either counsel or a director, and sometimes counsel and director, of the Reading Railway system since 1870.

Mr. SHEARN. You are also the president of the Philadelphia & Reading Railway Company?

Mr. BAER. I was speaking of the railway company now, not of the Reading Company.

Mr. SHEARN. I ask you about the Reading Company. You are the president of the Reading Company?

876 Mr. BAER. Will you just excuse me? My answers to the Reading Company as to the time of my connection with it must be limited to the time of the reorganization which was in——

Mr. SHEARN. 1896.

Mr. BAER. 1896, yes; and the other answer as to the railway company and the rest of the answer applies to the term I have been associated with the railway company since 1870.

Mr. SHEARN. You are also the president of the Philadelphia & Reading Coal & Iron Company, are you not?

Mr. BAER. Since April, 1901; yes.

Mr. SHEARN. Were you in any manner connected with that company prior to that date?

Mr. BAER. Yes.

Mr. SHEARN. In what capacity?

Mr. BAER. I was counsel—one of the counsel of the coal & iron company from 1870——

The CHAIRMAN. Mr. Baer, if you will be good enough to lift your voice; we have difficulty in hearing you.

877 Mr. BAER. I was counsel of the coal & iron company up to the time of the receivership. At various times I have been a director of the coal & iron company, and after the reorganization of 1896 I was a director of the coal & iron company and since April, 1901, I have been president of the coal & iron company.

Mr. SHEARN. You recollect there having been prior to 1896 a company called the Philadelphia & Reading Railroad Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. That company prior to 1896 owned all of the capital stock of the Philadelphia & Reading Coal & Iron Company, did it not?

Mr. BAER. Yes, sir.

Mr. SHEARN. You are also the president of the Central Railroad Company of New Jersey?

Mr. BAER. I am.

Mr. SHEARN. And have been since what time?

Mr. BAER. May, I think, 1901.

Mr. SHEARN. You are also the president of the Lehigh & Wilkesbarre Coal Company?

Mr. BAER. I am.

Mr. SHEARN. And have been since what time?

Mr. BAER. I think the fall of 1901.

878 Mr. SHEARN. Are you an officer of the Lehigh Coal & Navigation Company?

Mr. BAER. I am not.

Mr. SHEARN. You are the president of the Temple Iron Company?

Mr. BAER. I am.

Mr. SHEARN. And have been how long?

Mr. BAER. I was president of the Temple Iron Company, oh, for many years, I do not know how long, probably ten or twelve.

Mr. CAMPBELL. You mean in the early seventies, Mr. Baer?

Mr. BAER. Oh, no; I have been connected with it for many years, and I was president for, say, ten or twelve years prior to 1899, and then in 1900 I resigned the presidency of the Temple Iron Company and Mr. Thomas H. Watkins became president; and then about two years ago, I believe at the election of 1901, Mr. Watkins declined the reelection and I was elected president in 1901, I think.

Mr. SHEARN. And have been president since that time?

Mr. BAER. I have been president since that time.

879 Mr. SHEARN. Mr. Watkins was president, then, for about a year?

Mr. BAER. A year and a half or two years.

Mr. SHEARN. Are you a director of the Lehigh Valley Railroad Company?

Mr. BAER. I am.

Mr. SHEARN. And have been how long?

Mr. BAER. About—let me see—I think I was only elected a director in 1902—January, 1902—I think.

Mr. SHEARN. Are you an officer or director of any other companies connected with the anthracite coal trade?

Mr. BAER. Oh, any number of them—minor constituent companies—I can not name them all. You will understand that the Reading Coal & Iron Company controls stock of different coal companies, and I am the president of those coal companies, and the same is true—I really do not know whether I am the president of the companies, the stock of which is owned by the Temple Iron Company. I think I changed that, and that Mr. Law is the president.

Mr. SHEARN. Who is that Mr. Law?

Mr. BAER. Mr. A. F. Law, who was vice-president of the Temple Company, and I think either he or Mr. Thorne—Mr. Thorne was president of the minor companies.

880 Mr. SHEARN. Mr. Samuel Thorne?

Mr. BAER. No.

Mr. SHEARN. Robert Thorne?

Mr. BAER. No; I have forgotten his first name, but he was the champion baseball man of Harvard, Brink Thorne.

Mr. CAMPBELL. Yale.

Mr. BAER. Yale, is it? He has resigned and another person has taken his place.

Mr. SHEARN. You are the president and director of more coal companies than you can remember easily, in other words?

Mr. BAER. Well, of some of these minor companies, I will furnish you a list of them all.

Mr. SHEARN. But of no other large companies?

Mr. BAER. No.

Mr. SHEARN. What is the Reading Company—a corporation organized under the laws of the State of Pennsylvania?

Mr. BAER. The Reading Company is a company having a special charter granted by the legislature of Pennsylvania. It is what we call the holding company of the Reading System. It owns the stock of the

coal & iron company, it owns the stock of the railway company,
881 it owns the stock of the Reading Iron Company, and owns the stocks of many other companies, all of which you will find enumerated in the annual report of the Reading Company.

Mr. SHEARN. Being mainly companies connected with the anthracite coal transportation?

Mr. BAER. Mainly, yes. Oh, not coal transportation. The Reading Coal & Iron Company is engaged exclusively in the mining and selling of coal. The railway company is a transportation company, the Reading Railway Company. There are other companies connected with the railway company, the Atlantic City Railway, the Wilmington & Northern, and what we call the Reading System of railroads, the capital stock of which is owned by the Reading Company. The Reading Iron Company is a company engaged in the manufacture of iron, machinery, tubes and pipes, pig iron, and is also a mining company; it has ore mines and it has bituminous coal mines.

Mr. SHEARN. The Reading Company was originally called the "Excelsior" Company, was it not?

Mr. BAER. Its name was changed several times, probably it
882 was incorporated "Excelsior," then the name was changed to the National. I can not undertake to carry all those details. If they are important I will furnish you with them.

The CHAIRMAN. Mr. Baer, did I understand you to say that the report of the railroad company to its stockholders shows the stocks of all the companies?

Mr. BAER. Yes.

The CHAIRMAN. Have you any objection to furnishing a copy of that?

Mr. BAER. None at all.

Mr. SHEARN. I have one right here and I shall put it in.

Mr. BAER. Won't that satisfy you?

Mr. SHEARN. Yes. I shall put all of these reports in. The Reading Company, then, owns all of the stock of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Yes.

Mr. SHEARN. And all of the stock of the Philadelphia & Reading Railway Company?

Mr. BAER. Yes.

Mr. SHEARN. In other words——

Mr. BAER. Of course, now, you understand, with the quali-
883 fication that there are certain shares of stock required to be held by persons to be qualified as directors.

Mr. SHEARN. But that is a nominal holding, is it not?

Mr. BAER. Practically, yes; I say we own all the stock, but I did not want any quibbling about the others.

Mr. SHEARN. But you know your annual report show you own all the stock?

Mr. BAER. I say we do own all the stock.

Mr. SHEARN. Yes; every share of stock?

Mr. BAER. Every share of stock with the qualification of the stock that is transferred to qualified directors may or may not be owned by us. It is a question that I need not give an opinion upon.

Com'r PROUTY. Then the Reading stocks which sell on the market are the stocks of the Reading Company and not stock of the Philadelphia & Reading Railway Company?

Mr. BAER. There are no securities of the Reading Railway upon the market, nor of the Reading Coal & Iron Company upon the market; the Reading Company is the one that issues the securities. The coal
884 & iron company joined in the mortgage to secure the issue of bonds in the reorganization, part of the reorganization scheme; but the stocks and the bonds, when you hear of Read' stock and Reading bonds, that means the stock of the Reading Company and the bonds of the Reading Company.

Com'r PROUTY. And you say the Reading Company owns all the stock of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. The capital stock of the Philadelphia & Reading Coal & Iron Company is eight million dollars, is it not?

Mr. BAER. The reports will show that.

Mr. SHEARN. Yes; and of the Philadelphia & Reading Company twenty million?

Mr. BAER. Yes; twenty or twenty-five. I beg your pardon, why can't you offer those reports? You ask me questions, expecting me to keep in mind the capital stock of all the corporations I am connected with. It would be a pretty serious business. I do not believe a lawyer of your standing could remember all the data of his cases.

885 Mr. SHEARN. You are very much more courteous and kindly than your counsel, Mr. Baer.

Mr. BAER. Well, my counsel must take care of himself. I am sorry if he has been discourteous; I hope I will not be.

Mr. SHEARN. Now, please look at that page of the annual report of the Reading Company for 1902 and state whether the capital stock of the Philadelphia & Reading Coal & Iron Company is eight million dollars, and of the railway company twenty million dollars.

Mr. BAER. I will look at the report and give it to you exactly. The report shows that the capital stock of the Philadelphia & Reading Railway Company is twenty millions. The report of the Philadelphia Coal & Iron Company—the balance sheet shows that the actual stock of the coal & iron company is eight million.

Mr. SHEARN. And what does the report show as to the amount of the stock of those two respective companies owned by the Reading Company?

Mr. BAER. You are taking up time asking me questions that appear in the record——

Mr. SHEARN. Well, it was on that page I have just pointed to you——

886 Mr. BAER. Philadelphia & Reading Railway Company stock, twenty million, and Philadelphia & Reading Coal & Iron Company, eight millions, and stocks of sundry companies, fifty-one million two hundred and forty-four thousand.

Mr. SHEARN. In other words, Mr. Baer, when the Philadelphia & Reading Railroad Company was reorganized, the property was split up in this fashion: That the railroad property was turned over to the

Philadelphia & Reading Railway Company and the mining property was left intact with the Philadelphia & Reading Coal & Iron Company, and then the stocks of these two companies were vested in the Reading Company?

Mr. BAER. In a general way, yes. Under the foreclosure proceedings the railroad was sold and was purchased by the gentlemen representing the security holders under the statutes of Pennsylvania; the railroad was reorganized under the name of the Philadelphia & Reading Railway Company. Under that statute the capital stock and the bonded indebtedness of the railway company was fixed. The coal & iron company was not sold on foreclosure sale——

Mr. CAMPBELL. I think the witness' recollection should be refreshed at this point. My recollection is that the decree included the
887 property of the coal & iron company, but that it was afterwards——

Mr. BAER. What is the difference what your recollection was? In point of fact it was not sold, the decree did cover it and the coal & iron company's charter and land were not sold at foreclosure sale.

Mr. CAMPBELL. At the proper time, if your honor please, I think it would be well to put in the record here all those foreclosure proceedings. There is a paper that covers it all and it is not necessary to go into more detail about it.

Mr. SHEARN. I accept Mr. Baer's recollection of it; it is undoubtedly correct. Now, then, the capital stock of the Reading Company is held by a voting trust, is it not?

Mr. BAER. Yes.

Mr. SHEARN. Who are the trustees?

Mr. BAER. J. P. Morgan, Mr. Packard—what is his first name?

Mr. GOWEN. C. W. S.

Mr. BAER. C. W. S. Packard; and who is the president of the United States Trust Company here?

Mr. CAMPBELL. Mr. Olcott.

Mr. BAER. Yes; and Mr. Olcott.

888 Mr. SHEARN. Mr. Olcott, yes. The business of the Philadelphia & Reading Company then is directed and controlled by the interests owning and controlling the Reading Company?

Mr. BAER. If you mean by that that the Reading Company votes the stock of the Philadelphia & Reading Railway, I answer yes. If you mean that the Reading Company, after selecting the board, controls the business of the railway company, I answer no.

Mr. SHEARN. But the Reading Company, of course, does vote the stock of the Philadelphia & Reading Railway Company?

Mr. BAER. Yes.

Mr. SHEARN. And the Reading Company also votes the stock of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Yes.

Mr. SHEARN. Well, the operations of the Philadelphia & Reading Coal & Iron Company covering the coal that it shall mine and the coal it shall transport, and the price at which coal shall be sold, rests ultimately with the management of the Reading Company, does it not?

Mr. BAER. It does not. When the directors, the president, and
889 the directors of the coal company are selected by the Reading Company, their jurisdiction for that year has passed away, and the officers and directors of the Reading Coal & Iron Company control and manage the business without any control of the Reading Company.

Mr. SHEARN. But there is no conflict between yourself as president of the Reading Company and yourself as president of the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. Indeed, there is at times. I know of no more difficult work than to decide at times when you are president of different interests.

Mr. SHEARN. Is it not the fact, though, Mr. Baer, that in the last analysis the power of control over the business of the Philadelphia & Reading Coal & Iron Company is vested in the owners of the stock of the Reading Company?

Mr. BAER. Yes, as the ultimate power of control over any company is vested in the majority stockholders.

Mr. SHEARN. Precisely. How much stock of the Central Railroad Company of New Jersey does the Reading Company own? Just turn to this report, please, right here.

Mr. BAER. Yes, it is given here.

890 Mr. SHEARN. Page 13.

Mr. BAER. Why are you not content to take these facts as they are, without asking me to remain here to tell you what is in these books? I am merely asking it to save time.

Mr. SHEARN. Does the Reading Company own 145,000 shares out of the total of 272,138 shares of the capital stock of the Central Railroad of New Jersey?

Mr. BAER. The Reading Company owns, par, 14,504,000 of the capital stock of the Central Railroad Company of New Jersey.

Mr. SHEARN. That is 145,000 shares?

Mr. BAER. 145,000 and a fraction.

Mr. SHEARN. And the total is 272,138, is it not?

Mr. BAER. I do not remember that, but we hold the majority of the stock.

Mr. SHEARN. Please look at page 13 here in you annual report of 1901.

Mr. BAER. Of the Jersey Central?

Mr. SHEARN. No; of the Reading.

Mr. BAER. Oh.

Mr. SHEARN. State how many shares——

891 Mr. BAER. Well, my answer to that would be that I can not tell what the shares are now; at that time that was correct.

Mr. SHEARN. That is, in June 30th, 1901, the Reading Company owned 145,000 shares, out of a total of how many?

Mr. BAER. There were 272,138; there have been a few shares issued since, but we still have a majority.

Mr. SHEARN. And the Central Railroad Company of New Jersey owns all of the capital stock in the Lehigh & Wilkesbarre Coal Company, does it not?

Mr. BAER. Oh, no.

Mr. SHEARN. Owns a large majority, does it not?

Mr. BAER. Owns a majority, but there is a large outstanding minority of that stock.

Mr. SHEARN. Does it also own the control of the Lehigh Coal & Navigation Company?

Mr. BAER. Oh, no.

Mr. SHEARN. Then by virtue of the ownership of stock, the owners of the stock of the Reading Company not only control the operations and destiny of the Philadelphia & Reading Railway Company and
892 Coal & Iron Company, but also of the Central Railway of New Jersey and of the Lehigh & Wilkesbarre Coal Company?

Mr. BAER. By virtue of the holdings of stock the Reading Company elects the board of the Central Railroad of New Jersey, and the Central Railroad of New Jersey, by virtue of its holdings of stock in the Lehigh & Wilkesbarre Coal Company, can select the board of that company—not all the members of it, because by cumulative voting the minority could be represented, but the minority seem never to have made any complaint with our management.

Mr. SHEARN. Is the stock of the Erie Railroad Company also held by three voting trustees?

Mr. BAER. I don't know. I have heard so, but I can not testify to that. I am not connected with the Erie Company.

Mr. SHEARN. Do you know who owns the control of the Lehigh Valley Railroad Company stock?

Mr. BAER. Indeed I don't.

Mr. SHEARN. You do not?

Mr. BEAR. I do not.

Mr. SHEARN. Mr. Baer, do you know the approximate area of
893 the anthracite coal field of Pennsylvania—is it about 470 square miles?

Mr. BAER. I can not give you an opinion on that.

Mr. SHEARN. There are three divisions of the fields, are there not?

Mr. BAER. Generally, yes; of the regions you speak—of the Wyoming and the Lehigh and the Schuylkill.

Mr. SHEARN. And the Reading reaches the Schuylkill region principally, does it not?

Mr. BAER. Yes.

Mr. SHEARN. What railroad companies reach the anthracite coal fields connecting those fields with tide water?

Mr. BAER. Well, let us begin on the south. Pennsylvania Railroad, Reading Railroad, Lehigh Valley, the Central Railroad of New Jersey through its leased line, the Delaware, Lackawanna & Western, the Erie; and what is that Susquehanna road called?

Mr. SHEARN. New York, Susquehanna & Western?

Mr. BAER. Yes; New York, Susquehanna & Western.

Mr. SHEARN. New York, Ontario & Western?

Mr. BAER. New York, Ontario & Western.

Mr. SHEARN. Yes; those are the only means of communicating by rail between the anthracite coal fields and tide water, are they not?

Mr. BAER. I think so.

894 Mr. SHEARN. Do you know what proportion of the entire workable anthracite coal fields are owned and controlled by the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. The Reading System, through its control of—let me do some thinking; I am not an encyclopedia that I can answer offhand

without some reflection—taking the Lehigh & Wilkesbarre and the Philadelphia & Reading Coal & Iron Company, I think we control 62 to 63 per cent of the unmined coal, but that is an estimate based on the reports of geologists and guesses made as to what is hidden in the ground. But I think that was the estimate that was approved by the Coal Commission and is substantially correct.

Mr. SHEARN. I observe on page 13 of your annual report for 1901 a statement that the acquisition of the control of the Jersey Central is not only of enormous advantage because of additional facilities given the system, but that through this the Reading now owns and controls about 63 per cent of the unmined coal in Pennsylvania.

Mr. BAER. That is my recollection. I did not recall that I had stated it in the report.

Mr. SHEARN. By the way, it was in January, 1901, that the
895 Reading purchased the control of the stock of the Central Railroad of New Jersey, was it not?

Mr. BAER. My present recollection of it is that it was the last week in December or the first week in January.

Mr. SHEARN. The last week in December, 1900, or the first week in January, 1901?

Mr. BAER. About that time.

Mr. SHEARN. What proportion of the workable anthracite coal area is owned by the Lehigh Valley Coal Company?

Mr. BAER. I do not recall the figures.

Mr. SHEARN. In figures corresponding with those you have given as to the Lehigh & Wilkesbarre and Reading Companies, the Lehigh Valley Valley Coal Company's control of the fields is said to be about 16 per cent. Is that according to your recollection?

Mr. BAER. I do not know, I never investigated what the subdivisions of the other holdings are. I may have seen statements, but I made no investigation. I was not particularly interested except in our own.

Mr. SHEARN. Of course, you are a director of the Lehigh Valley Railroad Company?

896 Mr. BAER. And therefore must know everything about the Lehigh Valley Coal Company?

Mr. SHEARN. And, therefore, I suppose, are interested in the Lehigh Valley Coal Company?

Mr. BAER. I am not a director of the Lehigh Valley Coal Company.

Mr. SHEARN. But you are of the railroad company?

Mr. BAER. Yes, sir; and in a general way know about its business; but I do not recollect those particular facts.

Mr. SHEARN. Is it not a fact that the holdings of the Reading Coal & Iron Company and the Lehigh & Wilkesbarre Coal Company and the Lehigh Valley Coal Company together amount to 80 per cent of the entire workable coal area?

Mr. BAER. I have stated about what my recollection is of the Reading's control, and that I did not know what the Lehigh Vailey's is in any way, and by adding your two calculations together I can not be made to say that it is 80 per cent or any other per cent.

Mr. SHEARN. I thought that might suggest it to you. Do
897 you know what percentage, approximately, of the output of

anthracite coal is carried from year to year by the Philadelphia & Reading Railway Company?

Mr. BAER. Well, the percentage varies from year to year. You will find in Ruley's Tabulated Statements, which are published in all trade journals at the end of the year, the actual figures, and I prefer that you depend upon them, and not upon my recollection of them. In a general way it runs somewhere around 21 per cent.

Mr. SHEARN. I have in my hand a report on the coal trade of the United States, issued by the Bureau of Statistics of the United States Treasury Department, edited by O. P. Austin, Chief of the Bureau, in which he states that the percentages of shipments of anthracite from 1896 to 1901 have been as follows: 20.89 per cent, 20.2 per cent, 19.6 per cent, 20.32 per cent, 20.07 per cent, 19.60 per cent. Do those figures strike you as being approximately correct?

Mr. BAER. I suppose they are correct.

Mr. SHEARN. For the Lehigh Valley for the same years: 15.63 per cent, 15.4 per cent, 16.4 per cent, 15.92 per cent, 15.32 per cent, and 15.51 per cent. Do those strike you as being approximately correct?

898 Mr. BAER. I assume they are true. It is a Government report; why should it not be true?

Mr. SHEARN. This same report shows that the Central Railroad of New Jersey transported during the same years 11.58 per cent, 11.4 per cent, 11 per cent, 11.31 per cent, 11.77 per cent, and 14.06 per cent. From your knowledge of the operations of that company, do those strike you as being approximately correct?

Mr. BAER. I presume they are correct.

Mr. SHEARN. The Philadelphia & Reading Coal & Iron Company is in debt to the Reading Company in the sum of about $79,000,000, is it not?

Mr. BAER. Yes, sir; $79,002,220.56.

Mr. SHEARN. You treat that in your accounts as a loan account, do you not, and charge the Philadelphia & Reading Coal & Iron Company one and one-eighth per cent per annum interest on it?

Mr. BAER. The history of that is this: The coal and iron company owed the railroad company that amount of money, and the purchasers at the sale bought all the accounts of the railroad company and all the claims of the railroad company against the coal and iron company, and it was transferred by the purchasers to the Reading Company, and as

899 the coal & iron company was not foreclosed, and its charter remained, that is carried as a liability against the coal & iron company.

Mr. SHEARN. And you make a charge of 1 1/8 per cent per annum against that company as interest on that debt?

Mr. BAER. We do not have any fixed sum. The rate of interest the coal & iron co. pay depends upon yearly earnings of the company and we have no agreement as to a fixed rate of interest. It just suited our convenience to appropriate that much out of the assets of the coal & iron company—out of the profits, I mean, of the coal & iron company for a given year, but we may, if we earn enough to pay three or four per cent, probably charge three or four per cent interest. That is an open question.

Mr. SHEARN. That is, all that is left over from the operations of the coal & iron company, if anything goes to the Reading.

Mr. BAER. Unquestionably. It is a stockholder and creditor.

Mr. SHEARN. I observe in the report you hold in your hand for 1902 there is a charge of interest, 1 1/8 per cent against this loan of seventy-nine millions?

Mr. BAER. That was all we thought the coal & iron co. could
900 afford to take out of the earnings that year any pay over to the Reading Company.

Mr. SHEARN. Is it not a fact, Mr. Baer, that the organization of and existence of the Philadelphia & Reading Coal & Iron Co. is simply an attempt to get around the constitutional provision prohibiting a railroad company from engaging directly or indirectly in mining coal?

Mr. BAER. Mr. Shearn, the coal & iron co. is a corporation of the State of Pennsylvania authorized to do certain things. It exists there under the laws of the State of Pennsylvania and it was not organized and does not exist for the purpose of evading any laws of the State of New York or of the United States. If the organization of the coal & iron company is illegal or of the Reading Co., we will be glad to have that tested in any forum you see fit to select.

Mr. SHEARN. You have practiced law a great many years?

Mr. BAER. I am sorry to say. I would not like to tell you how many. You might get at my age.

Mr. SHEARN. You are familiar with the constitution of the State of Pennsylvania. Do you recollect section 5 of article 17 of the constitution of the State of Pennsylvania, which is as follows:

901 "No incorporated company doing business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company directly or indirectly engage in any other business than that of common carrier or hold or acquire lands, freehold or lease hold directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines from manufactory on its railroad or canal not exceeding 50 miles in length."

Mr. BAER. I do, sir.

Mr. SHEARN. And you are of opinion that although all the stock of this company is owned by the Reading Company, it having formerly been owned by the Philadelphia & Reading Railway Company—all the capital stock—it is owned by the Reading Company, which is also a creditor of the Philadelphia & Reading Coal & Iron Company to the extent of seventy nine million dollars; it is not engaged directly or indirectly in the mining of anthracite coal.

Mr. BAER. I am of the opinion, as a Philadelphia lawyer, that that section of the constitution of 1874 has no application whatever
902 to the charter of the Philadelphia & Reading Coal & Iron Company, nor to the Reading Company, and that therefore that provision of the constitution of Penn. does not apply, and the supreme court of Penn., in a number of cases, to which I would be glad to refer you if you desire to study constitutional questions of Pennsylvania, have decided that the existing charters prior to the adoption of the new

constitution were not affected by that constitutional provision. Now, that is the opinion of a lawyer, which you happened to draw out in examining a president of a railroad.

Mr. SHEARN. That being the case, Mr. Baer, what is the occasion for having a separate organization for the Philadelphia & Reading Coal & Iron Co., a separate staff of officers, separate stock, and separate accounts, and all these other arrangements?

Mr. BAER. What do you mean? In the orderly conduct of business the Philadelphia & Reading Coal & Iron Co. exercises the corporate franchises granted to it. Those corporate franchises are exceedingly valuable. They were granted prior to the adoption of the new con-
903 stitution under the franchises then granted, which under the Dartmouth College case and under the decisions of the State of Pennsylvania are inviolable. The Philadelphia & Reading Coal & Iron Co. can hold lands and do business, and in order to do that it must have an organization. It has that organization and carries on business. Does that answer your question?

Mr. SHEARN. Yes, sir. That suggests the reason the Philadelphia & Reading Coal & Iron Co. was not included in the foreclosure sale.

Mr. BAER. It does. I frankly tell you that I, as one of the attorneys responsible for the reorganization, thought that charter was so valuable that no risk could be taken, and therefore, there was no foreclosure of the Reading Coal & Iron Co. We preserved the charter as we preserved the charter of the Reading Company, which antedates the new constitution. The railway company is subject to the new constitution because under the reorganization act of the State of Pennsylvania, when a rail-
road is foreclosed the purchasers are authorized to organize a new
904 company possessed of the old franchise, but subject to the stipulation that they shall file an acceptance of the new constitution.

Mr. SHEARN. Then you have not accepted the new constitution?

Mr. BAER. The railway company has.

Mr. SHEARN. But not the Reading Coal & Iron Company?

Mr. BAER. The Reading Coal & Iron Company has not, and I think as long as I have anything to do with it will not.

905 Mr. SHEARN. Then by virtue of whatever rights you have under this legal theory of yours you are now accomplishing indirectly what the constitution of the State of Pennsylvania directly prohibits?

Mr. BAER. I decline to answer that question in that way. I have stated to you the facts, and although I am a lawyer it is not necessary on my examination that you and I should become a debating society and discuss legal questions.

Mr. SHEARN. Very well. Do you know anything about the attempt to lease the Central Railroad of New Jersey to the Port Reading Railroad Company in 1892?

Mr. GOWEN. We object to that.

Mr. SHEARN. Do you know that the Central Railroad of New Jersey was leased to the Port Reading, owned by the Philadelphia & Reading Railway Company, in 1892?

Mr. BAER. Oh, yes.

Mr. SHEARN. And that the Lehigh Valley was also leased to that same company?

Mr. BAER. Yes, sir.

Mr. SHEARN. And that the lease of the Central of New Jersey to that company was thereafter set aside in the courts of New Jersey?

906 Mr. BAER. I know that as a lawyer; yes, sir.

Mr. SHEARN. You now, however, have the same control over the Central Railroad of New Jersey and the Lehigh & Wilkesbarre Coal Company by virtue of the ownership of the stock that you had under the lease that was set aside, have you not?

Mr. BAER. No; the control by lease and the control by stock in law are two different things, but I suggest to you that that is a question which probably only interests the State of New Jersey and the Reading Railway Company. I am not aware that any jurisdiction has been given to this very able body to go into questions of the power of a corporation to hold or lease railroads in New Jersey. I supposed that that, at least, was reserved to the State.

Mr. SHEARN. What was the object and purpose of the purchase, in January, 1901, or December, 1900, of the control of the stock of the Central Railroad of New Jersey by the Reading Company?

Mr. BAER. The object was to get a majority of the stock of the Central Railroad of New Jersey. That was the object.

907 Mr. SHEARN. Why did you want that majority of the stock of that railroad company?

Mr. BAER. Because it was a connecting railroad and we thought it a valuable thing to control and operate. The Central Railroad of New Jersey was the road over which the traffic of the Reading system must go to reach New York, and in the exercise of the ordinary judgment of the everyday man we thought it would be advisable to get the control of a road that was so important to us as a terminal, and which, falling into adverse hands, might cut off the great Reading system from your great city of New York. Those were the general business reasons that led us to buy the stock of the Jersey Central.

Mr. SHEARN. Was there not a more important, moving reason than that—that the purchase vested in your control sixty-three per cent of all the unmined coal in the State of Pennsylvania?

Mr. BAER. It was not the controlling factor. It was a factor. We would be glad to buy more coal lands at a fair price. The laws of the State of Pennsylvania permit us to do it. If you have any collieries to sell and can sell them at a fair price, and we can finance it, we will buy them.

908 Mr. SHEARN. Or any more railroads?

Mr. BAER. Any more railroads we can buy at a fair price that we think would be useful to us we will buy.

Mr. SHEARN. Anything that enables you more completely to dominate the anthracite coal situation?

Mr. BAER. My dear sir, that is not the purpose. It is for the purpose of making the Reading system a paying system, to earn fair money for its stockholders and its security holders. We do not aim to dominate the anthracite situation nor any other trade. We do aim to get as much anthracite traffic, and miscellaneous traffic, and bituminous traffic, and iron traffic as, in the ordinary course of business, it is possible for us to get. If you want to locate on our lines, we will offer you every inducement for the development of your business to give us traffic.

Mr. SHEARN. The more thoroughly you dominate the anthracite coal situation, the more money you make for your stockholders?

Mr. BAER. Naturally. The more things you can sell, if they can be sold at a profit, the greater profit, I suppose, you make. Is not that simple and axiomatic?

909 Mr. SHEARN. It is, absolutely; and the more coal supply you control, it makes it the more easy to control the price at which coal shall be transported and the price for which it shall be marketed.

Mr. BAER. Do not those things follow naturally?

Mr. SHEARN. I should say so.

Mr. BAER. Well, what is the dispute about it, then?

Mr. SHEARN. Prior to 1899 and for several years prior the coal had been transported, had it not, from the anthracite regions on a percentage basis when it had to do with the coal of independent producers?

Mr. BAER. Not entirely.

Mr. SHEARN. Well, largely?

Mr. BAER. Some of the coal was transported on a percentage basis and some was not.

Mr. SHEARN. By the way, do you know about what percentage of the output of anthracite coal is mined by the subsidiary, independent operators—operators other than the great coal companies owned by the railroad companies? Is it about thirty per cent?

910 Mr. BAER. I won't venture to give you those figures offhand. I really do not recall. I will furnish you that information. I really do not like to guess at an important thing like that.

Mr. SHEARN. I do not care to have you guess.

Mr. BAER. I can not remember all those figures.

Mr. SHEARN. During those years immediately preceding 1899, was not the greater part of the coal of independent operators carried on a percentage basis, which was either fifty-five or sixty per cent of the price realized on prepared sizes at tide water?

Mr. BAER. Yes; a large proportion of the coal.

Mr. SHEARN. Did it come to your knowledge in 1899 that there was general dissatisfaction with that among the independent operators?

Mr. BAER. In 1899?

Mr. SHEARN. Yes, sir.

Mr. BAER. No; in our companies we had no dispute with any of our operators. We have very few individual operators on the Reading System, and I had no knowledge in 1899, that I recall, of any troubles with our operators in reference to that.

911 Com'r PROUTY. Mr. Baer, I am not certain I understand you. Did you say that the coal of independent operators was transported to market for a per cent?

Mr. BAER. Oh, no; I did not say that.

Mr. SHEARN. Well, it was purchased for transportation?

Mr. BAER. Oh, no; the different coal companies purchased from individual operators at the rate of sixty per cent, and in some places fifty-five per cent. The Reading Coal & Iron Company would buy the output of a man on the basis of sixty per cent, or it might be—depending on the quality of the coal—fifty-five. Some of the other coal companies would do the same thing. The Lehigh Valley Coal Company, and the only

railroad company I know that did that was the Delaware, Lackawanna & Western, which possesses a peculiar charter, an old charter of the State of Pennsylvania, in which there is a clause authorizing the railroad company to carry on the coal business, and it is by virtue—as the president always told me, and I suppose it was true—of the peculiar clause in the Delaware, Lackawanna & Western charter that they have made those contracts.

912 Com'r PROUTY. I wanted to know whether there was ever a time when the railroad companies, or any of them, transported coal to market for a percentage of the selling price of the coal.

Mr. BAER. I never knew of such a time. It never was so in our company, and I never heard of it except, as I tell you, the Delaware Lackawanna & Western, exercising the peculiar power of their charter, and they may have made an arrangement of that kind under the provision of the charter, but it was not as a railroad company.

Com'r PROUTY. There would not be any reason previous to the passage of the act to regulate commerce why such a contract might not be made, would there?

Mr. BAER. I think not.

Com'r PROUTY. But in fact it was not done?

Mr. BAER. I do not recollect that it was ever done.

Mr. SHEARN. But the fact was that the greater part of the independent coal was disposed of by the owners of the coal either to railroad companies or companies owned by railroad companies on a percentage basis of the price at tide water, which was either 55 or 60 per cent?

913 Mr. BAER. I have already given my answer to that and there is no use repeating it, because in repeating it, unless I carefully observed the language you put into my mouth, I might inadvertently say something I did not intend to say. You are naturally trying to get me to say that this was a transportation problem as it was not; I am not going to say so.

Mr. SHEARN. Oh, no. You called it a purchase contract, and I call it a transportation contract.

Mr. BAER. You and I do not want to call things by the same name. I can only give you the facts.

Mr. SHEARN. What led to this was the Commissioner's question. Undoubtedly the word "transportation" was inadvertently used first. That is why I repeat the question using the word "purchase." I say it is a fact, is it not, that in the years immediately preceding 1898 and 1899 the major part of the coal produced by independent operators was disposed of by them either to railroad companies or to coal companies owned by railroad companies on a percentage basis of the prices realized on prepared sizes or the sizes at tide?

914 Mr. BAER. I answer by saying that a large part—whether it was a majority or what proportion, I do not know—of the private operators' coal was sold to coal companies whose capital stock was undoubtedly controlled by different railroad companies, and that in one instance the purchase was made by a railway company having the special power granted in its charter to purchase coal and sell coal. Does that answer your question?

Mr. SHEARN. Yes, sir; perfectly. When did it first come to your knowledge that there was general dissatisfaction among independent operators with those contracts?

Mr. BAER. In 1900.

Mr. SHEARN. You knew in 1899, did you not, of the existence of the firm called Simpson & Watkins?

Mr. BAER. Yes, sir.

Mr. SHEARN. They owned and operated a large number of collieries in the Lackawanna region, did they not?

Mr. BAER. Yes, sir; up around Scranton.

Mr. SHEARN. Did it come to your knowledge in 1899 that a railroad was being projected by independent operators from that region to tide water?

Mr. BAER. Yes, sir.

Mr. SHEARN. To be known as the New York, Wyoming & Western?

Mr. BAER. I do not recall the name.

Mr. SHEARN. Do you know Mr. E. B. Sturges, of Scranton?

Mr. BAER. I think I have met Mr. Sturges, but can not recall him; in the sense of knowing him, I do not. If he walked in here now I would not know him.

915 Mr. SHEARN. Did it come to your knowledge at that time that a large proportion of independent operators in that region had organized a railroad corporation and had pledged the future output of their mines to that railroad for transportation, if it should be built?

Mr. BAER. Yes, sir.

Mr. SHEARN. Did you know that Simpson & Watkins were actively interested in that railroad venture?

Mr. BAER. I knew they were connected with it, yes. How active they were in it I do not know.

Mr. SHEARN. Did you know what their output was?

Mr. BAER. I had it investigated in January and February, 1899. We had a report made under my direction by some experts of their collieries and a valuation put upon them, and all that data was before me as a lawyer at that time and also as president at that time of the Temple Iron Company, but I can not recall it.

Mr. SHEARN. Do you recollect that their output exceeded a million tons a year?

Mr. BAER. That is my impression.

Mr. SHEARN. In other words, they were a prominent factor in this movement to build this railroad, with such an output as that, were they not?

916 Mr. BAER. I do not know how to answer that question, unless you allow me to tell the story of what I do know, and then I will tell it.

Mr. SHEARN. Do you recollect what the total tonnage was pledged to this New York, Wyoming & Western Railroad?

Mr. BAER. I never knew anything about that except the general talk, and I never believed that anybody seriously contemplated building a railroad.

Mr. SHEARN. You knew a railroad was incorporated?

Mr. BAER. Oh, that is all right. That is one stage in a game that is easily played in this country.

Mr. SHEARN. You knew also that the stock was largely subscribed for, did you not?

Mr. BAER. I have no doubt that is true, but I do not know it.

Mr. SHEARN. And that written contracts pledging the entire output of these mines to the railroad had been entered into by these various independent operators?

Mr. BAER. I suppose so, but I knew that while that was going on, many of these operators were coming to us and sending gentlemen in this city begging us to buy their mines, and I generally put two and two together.

917 Mr. SHEARN. I suppose among those gentlemen were Simpson & Watkins?

Mr. BAER. Among those gentlemen were Simpson & Watkins, and a number of other gentlemen, whose names I can give if it is the business of the Commission to enquire into collateral things of that kind.

Mr. SHEARN. We will confine our attention to Simpson & Watkins. You say that you were for a number of years connected with the Temple Iron Company?

Mr. BAER. Yes, sir.

Mr. SHEARN. That was a specially incorporated company chartered by the legislature of Pennsylvania?

Mr. BAER. Yes, sir.

Mr. SHEARN. With a charter antedating the former constitution?

Mr. BAER. Yes, sir.

Mr. SHEARN. What was its capital stock originally?

Mr. BAER. $240,000, I think.

Mr. SHEARN. When did you become president of it?

Mr. BAER. I told you before I did not know—about 1899 or 1900. I was president probably ten years.

Mr. SHEARN. Ten years before 1899?

Mr. BAER. Yes.

918 Mr. SHEARN. What was the business of the Temple Iron Company?

Mr. BAER. The business of the Temple Iron Company was the manufacture of pig iron.

Mr. SHEARN. Where did it carry on that business?

Mr. BAER. At the village of Temple, in the county of Burkes, in Pennsylvania.

Mr. SHEARN. How large a plant did it have at the end of 1898 and the beginning of 1899?

Mr. BAER. A single-stack anthracite furnace.

Mr. SHEARN. How many men did it employ?

Mr. BAER. I suppose from one hundred to two hundred. I can not tell just how many. Sometimes we worked mines and sometimes we did not.

Mr. SHEARN. Do you recollect what its annual output was?

Mr. BAER. It produced about two hundred tons—say from 200 to 225 tons a week of pig iron at that time.

Mr. SHEARN. Did this company use any or acquire any anthracite coal for carrying on its business?

Mr. BAER. It used anthracite coal and at one time it had stock in the Casca Williams Coal Company.

Mr. SHEARN. At what time?

919 Mr. BAER. Well, between 1873 and 1880, when it was first organized.

Mr. SHEARN. In 1898 or 1899?

Mr. BAER. It owned no coal lands whatever in 1899. It only owned ore lands and a lot of houses and a first-class anthracite furnace in the village of Temple.

Mr. SHEARN. It required no anthracite coal in 1898 for carrying on its business?

Mr. BAER. Oh, yes; it did.

Mr. SHEARN. How much anthracite coal did it acquire to do its business?

Mr. BAER. It generally takes a ton and a half of anthracite coal for a ton of pig iron, and it may run up, depending on the working of the furnace, to one and three-quarters.

Mr. SHEARN. Suppose it is two tons?

Mr. BAER. You can make that calculation yourself.

Mr. SHEARN. How much of the capital stock of the Temple Iron Company did you own in 1898?

Mr. BAER. I do not recall. I think I owned one-fifth.

Mr. SHEARN. Were there many stockholders?

Mr. BAER. No; Major Smith and Colonel Smith—oh, there were only half a dozen stockholders.

920 Mr. SHEARN. You held approximately one-fifth?

Mr. BAER. I held about one-fifth and the others, with the exception of William Kleiner's family. Do you want *to* know all about that?

Mr. SHEARN. When did it first occur to you to buy up the stock of the Temple Iron Company?

Mr. BAER. When I wanted to use the charter for the purpose of holding the stock of the collieries that Simpson & Watkins sold us.

Mr. SHEARN. When did it first occur to you that it was desirable that you should buy the collieries of Simpson & Watkins?

Mr. BAER. When?

Mr. SHEARN. Yes, sir.

Mr. BAER. The purchase of the Simpson & Watkins collieries arose in this way: Simpson & Watkins had associated with them certain gentlemen of this city who were interested in the general business of the country and those gentlemen who had large interests in Simpson & Watkins' properties suggested that it would be a good thing for the different coal companies to purchase the Simpson & Watkins collieries.

Mr. SHEARN. Did they say why it would be a good thing?

921 Mr. BAER. I will tell you. Mr. Watkins had got up a theory that it was possible to get up a great company located here in the city of New York which would buy and sell coal, and that by consolidating the different coal sales agencies and having one purchasing company, the scheme could be carried out. The gentlemen associated with Simpson & Watkins, members of their company, were very much opposed to Simpson & Watkins going into the construction of that rival railroad and did not believe there was any serious purpose except to induce the

companies to buy out the collieries. When the whole subject was brought forward a syndicate was formed for the purpose of buying these collieries. Mr. Watkins outlined his plan of how this purchasing company might act, what it might do. The various railroad companies were seen and they agreed to help finance the concern by a purchase of the stock in the future. The companies bought the stock—first the Temple Iron Company increased this little furnace, increased its capital stock, under the laws of the State of Pennsylvania and issued bonds for the purpose of paying for these collieries, the collieries being represented by small corporations, and we purchased the stock. In one case, an interest in a limited partnership, we did not get the whole of the concern.

922 Now, after we made that purchase and the railroad companies agreed to guarantee the stock and bonds, because they had agreed to purchase it when called upon by the trustees, if that call is made in 1904, optional; and absolute, I think, in 1907. The object at the time of that purchase was undoubtedly as affecting the consideration to relieve Simpson & Watkins's partners and to get Messrs. Simpson & Watkins out of that anthracite situation.

Mr. SHEARN. Do you mean out of that railroad situation?

Mr. BAER. Whatever you may call it.

Mr. SHEARN. That was it, was it not?

Mr. BAER. We did not want, as railroad companies, to encourage the building of another railroad into that country for the purpose of affecting and taking from us our business, and under the laws of the United States and of Pennsylvania any railroad corporation has a right to take legal means to secure and hold its traffic, and, acting under that power and with a view to carrying out Mr. Watkins's scheme of making a great purchasing and selling company here in the city of New York which would save many thousands of dollars, the properties were acquired.

923 That is the whole story about it. Subsequently we discovered, or I did, that Mr. Watkins's scheme was absolutely undesirable; that it would not work at all. I opposed it and refused to make the Temple Iron Company the selling agent of the Reading Company, and the other presidents did the same thing, and then Mr. Watkins resigned and I took the presidency, and we have operated it since. We have operated these collieries sold to the coal company; the presidents of these companies guaranteeing the debt were made the directors, because they are the people most directly interested, and, in addition to these directors, two or three of the old directors of the Temple Iron Company are in the board—Mr. Schenck, Mr. Kondrup, and Mr. Brogan, who are my personal friends and were the old stockholders in the Temple board, and they remain there—but the majority is controlled by the presidents of the companies who guaranteed the payment of the bonds. Now, is that explicit enough?

Mr. SHEARN. I think it is very explicit. As you very frankly say, the object of increasing the capital stock of the Temple Iron Company—increasing its bonds and putting out this stock and bonds—was to eliminate Simpson & Watkins from the anthracite situation there.

924 Mr. BAER. I did not say that; not at all.

Mr. SHEARN. Well, to relieve Simpson & Watkins from the situation?

Mr. BAER. It was with a view of carrying out a scheme to get up this purchasing company, which was a favorite hobby of a good many gentlemen here in New York. They thought a good deal of money would be saved by doing so. Mr. Watkins was enthusiastically in favor of it. I was willing to advise the purchase of these collieries, because I found they were worth the money and would be a desirable purchase, and because I was anxious—I do not deny it—to get Simpson & Watkins tied up to us with their coal interests and not be Ishmaelites in the field.

Mr. SHEARN. And not be tied up with the projected railroad?

Mr. BAER. I did not care about that. I knew that if Simpson & Watkins were out of the way Mr. Sturgis and some of the others who wanted to sell their collieries, if they could find a buyer——

Mr. SHEARN. You did not want another railroad constructed to tide water, did you?

925 Mr. BAER. Of course not. It is an economic waste to build railroad when the present railroads have not traffic enough to pay. That is the dream of people who are idealists and not business men, to build more railroad than there is necessity for.

Mr. SHEARN. If this railroad had been constructed it would have resulted in competition, would it not?

Mr. BAER. It would have resulted in having to buy out that railroad and increasing the cost of everything to the public. That is what always results from a party of people trying to build a railroad for the purpose of affecting an established business. They have to be bought out in the end or go into bankruptcy, and the general story is always the same. You can not build railroads when there is no demand for them and make them profitable any more than you can build houses and make them profitable when there are no people to occupy them.

Mr. SHEARN. If this road had been built, and you had not succeeded in buying it out, it would have resulted in competition in the business of transporting coal?

Mr. BAER. Not at all. I think not. The railroad would have had to charge such high prices for hauling that coal in order to pay the investors that it would not have hurt us at all, so far as competition goes,

926 but to the extent of withdrawing traffic from our road it would have increased our cost of transportation, and the general result to the public would have been a higher instead of a lower cost.

Mr. SHEARN. It would have brought coal to tide water?

Mr. BAER. It would not have brought it there for nothing. The cost of transportation on a new railroad, I presume you will admit, must be greater than on an old established railroad.

Mr. SHEARN. But this railroad would have brought coal to tide water?

Mr. BAER. Undoubtedly, if it had been built.

Mr. SHEARN. That coal would have been for sale here in competition with your coal, would it not?

Mr. BAER. I think not. I think the cost of getting it here would have been so great that it could not compete with our coal.

Mr. SHEARN. If the competition had not been as great as you say——

Mr. BAER. If they could have carried that coal to New York for half what it cost us, they could sell it for less than we could sell.

927 Mr. SHEARN. You wanted to prevent such a result and took these steps by purchasing the collieries of Simpson & Watkins?

Mr. BAER. I did not want to do anything of the kind. I advised these railroad companies to secure the traffic they had, and if a rival company were to come to-day and undertake to build a siding into a colliery that is shipping over any road with which I am connected and it was necessary to buy that colliery to save the traffic to my road, I would do it; would not you?

Mr. SHEARN. Not if it is against the law.

Mr. BAER. If it is against the law, point to the law and I will not do it. I believe in the majesty of the law.

Mr. SHEARN. The Sherman antitrust law.

Mr. BAER. I welcome you to proceed under the Sherman antitrust law and if anything we have done is contrary to the law of the land, we will abide by the decision of the proper tribunal. There are no people more interested in maintaining law and order than we are. I have seen enough of doubtful administration of the law, and if we are sinners against any law that you or your friends can enforce, go into the proper forum and try your hand. We will be there and if we are guilty
928 we will abide by the judgment. I am getting tired of some of your friends assuming a virtue superior to the rest of us and trying to make out that the business men of this country are a gang of conspirators, trying to evade the laws of this country. We have as much respect for the law as your client or the people condemning us.

Mr. SHEARN. I suppose you include in this class of dreamers the President of the United States?

Mr. BAER. I, sir, have no criticism to make of the President of the United States.

The CHAIRMAN. Please do not answer that question, it is not a proper one to ask.

Mr. SHEARN. Well, I do not think it is an improper one. It is not meant in an improper spirit.

The CHAIRMAN. I understand that.

Mr. BAER. I should not answer a question of that kind. Should you, Mr. Shearn?

Mr. SHEARN. You are denouncing me and my client as dreamers or idealists.

Mr. BAER. Have I done anything of that kind? I have not denounced anybody. I am willing to have the law tested.

Mr. SHEARN. If it can be enforced.

Mr. BAER. A law is not worth anything unless it is capable of
929 being enforced. I never hope to get a New York lawyer to understand the constitution of Pennsylvania. If you will come over to Philadelphia we will try to train you.

Mr. SHEARN. Now, Mr. Baer, as president of the Temple Iron Company, did the answer put in by the Temple Iron Company in the proceeding before Attorney-General Davie come under your notice or observation?

Mr. BAER. I suppose so. I do not know whether it did or not. Did I sign it, Judge? [Addressing Judge Campbell.]

Mr. CAMPBELL. No, sir.

Mr. SHEARN. No; the judge did the signing.

Mr. BAER. I am not able to do all the business in detail of a great railroad system.

The CHAIRMAN. Mr. Shearn, you seem to have reached another branch of the inquiry. Let me say, for the information of counsel and the witness, that when this hearing was assigned at this time it was uncertain whether counsel would require more than three successive days, and prior to that time two members of the Commission had made engagements to be absent from here this afternoon. They
930 both desire to hear the conclusion of Mr. Baer's testimony. It would accommodate them and the rest of us if Mr. Baer's examination could be suspended at this point and be resumed next week.

Mr. SHEARN. May I have the five minutes until one o'clock?

The CHAIRMAN. Yes, sir.

Mr. SHEARN. Mr. Baer, I call your attention to the version of this Temple Iron Company purchase given in the answer of the Temple Iron Company filed with the attorney-general of the State. After denying our wicked and unfounded inferences, it says: "The truth and fact is that, having determined to take measures and secure to itself a permanent supply of coal by acquiring an interest——"

Mr. CAMPBELL. I would like to object to that. It is not competent or material for any purpose. In connection with my objection I want to make a little statement. At the time of the preparation of that answer, I had no officer present; the president was away, and I did the
931 best I could with the lights I had. If it is not accurate it is not my fault.

Mr. SHEARN. It is sworn to by you.

Mr. CAMPBELL. To my best knowledge, opinion, and belief. I want to say in addition that I afterwards had occasion to consult Mr. Baer, and when he explained the actual terms of the operation they were somewhat different, but the paper is immaterial.

Mr. BAER. It is no statement of mine. I do not think I saw it at all. I can not be held responsible for every paper in a railroad proceeding.

Mr. SHEARN. I want to know if this correctly states what took place: "The truth and fact is that, having determined to take measures and secure to itself a permanent supply of coal by acquiring an interest in the said several coal companies, it called upon the several railroad companies mentioned to aid it with their credit to enable it to raise the necessary funds for said purposes."

Mr. BAER. That is right.

Mr. SHEARN. "The mines of the said several companies being
932 located upon the lines of the said several railroads——"

Mr. BAER. That is right.

Mr. SHEARN. Were any located on the Reading?

Mr. BAER. No, sir.

Mr. SHEARN. What was the interest of the Reading?

Mr. BAER. It was on account of this proposed purchasing company. Our coal was to be handled in New York. We believed it was such a good investment that the company, under the name of Drexel & Company, went into it. We thought, and still think, it was a valuable investment. You will see how much we took and paid for that stock. We were in the syndicate and were the only—not the only, but a good many of the subscribers did not take their stock. They took the usual form of the syndicate selling to the public. Simpson & Watkins had a large block and held it until Mr. Simpson resigned.

Mr. SHEARN (continuing reading). "The mines of the said several companies being located upon the lines of the said several railroads, the said railroad companies, being thereunto specifically authorized so to do by the laws of the State of Pennsylvania, did aid, by the exten-
933 sion of their credit and by the guarantee of securities issued by this respondent to the end that they might severally continue to secure to themselves the traffic derived from the several operations of the said several companies in like manner as they had enjoyed the same theretofore."

The Philadelphia & Reading have not enjoyed any of this traffic, had it?

Mr. BAER. Yes, sir.

Mr. SHEARN. Had the Reading Company enjoyed any traffic?

Mr. CAMPBELL. It is not a railroad.

Mr. SHEARN. What do you say as to that?

Mr. BAER. That is the answer of the Reading Company and not of the Reading Railroad Company.

Mr. SHEARN. This is the answer of the Temple Iron Company and states that the object was to secure a permanent supply of coal for the Temple Iron Company, and you do not agree with that?

Mr. BAER. Of course I do not. The judge was mistaken.

Mr. SHEARN. How did you come to fix on the various percentages by which the stock and bonds of these——

934 Mr. BAER. That was left to me, as attorney, having charge of all the details. I was responsible, as attorney, for the selection of the Temple charter and everything connected with it, and the question of how these guarantees should be made was a subject of long and difficult negotiation. The people who were to take the stock and bonds wanted the joint guarantee of all the companies, and the presidents of the Delaware & Lackawanna, at the time being, or at least the attorneys—I should say the officials of the Delaware & Lackawanna and some of the other companies, the Reading amongst them—thought a joint guarantee was not fair; that some of the companies were stronger than others; and, after considerable reflection of the subject, I finally made the proposition that it would be fair to make separate guarantees and base the purchase of the stock and the guarantees on the tonnage—the gross tonnage—of each of the guarantor companies, and I think, upon looking at the statistics for the previous year, I reached the conclusion that 3¼ or 3½—I do not remember which per cent—on the actual product on the amount
935 each road sent to market would probably be a fair basis, and it was upon that basis, as I recollect it now, that I fixed those guarantees.

Mr. SHEARN. The guarantee of the Reading is 20.50?

Mr. BAER. Oh, no; it is not.

Mr. SHEARN. Excuse me; it is 42.25.

Mr. BAER. It is not anything of the kind. It is 29 and a fraction.

Mr. SHEARN. Do you expect to prove the fact to be different from what it was stated yesterday?

Mr. SHEARN. I expect to show the facts I stated yesterday, but we have not proved what the proportions were.

The CHAIRMAN. I thought Mr. McAnulty testified——

Com'r PROUTY. Mr. Shearn stated that the Reading guarantee was 29 per cent.

The CHAIRMAN. My recollection is that some one testified that these percentages were based on the experience of preceding years as to how much the roads carried.

Mr. SHEARN. That was my statement.

Mr. CAMPBELL. It was orally stated by counsel, but is not in proof.

936 Mr. SHEARN. Yes, sir. The Reading percentage was 29.96, was it not?

Mr. BAER. Yes; I think so, I think it took roundly a basis of probably 3⅓ per cent on nine millions output of the coal and iron company property.

Mr. SHEARN. For the previous year or a period of years?

Mr. BAER. Or a period of years? I can not remember. The fact is it was based on the tonnage of the respective parties, and that is all you want.

Mr. SHEARN. And the New York, Susquehanna & Western was 4.68 per cent, was it not?

Mr. BAER. I do not remember that.

Mr. SHEARN. Can you recollect that the Lehigh Valley was 22 and a fraction?

Mr. BAER. I do not think that is fair, to read through a paper and ask me about other companies.

Mr. SHEARN. Well, as long as we are going to adjourn I will ask you about those percentages at the next meeting, if you will kindly refresh your memory.

The CHAIRMAN. There must be ample means of showing that.

937 Mr. SHEARN. The contracts will, if they will produce them; but they will not produce them.

Mr. BAER. Then how are you going to get it in orally?

Mr. SHEARN. You have already testified to one and have shown a disposition——

Mr. BAER. I am glad you think I am showing a good disposition. My dear sir, I am wise enough as a client to let my counsel try my case. I know what the proverb about that is. "When a man is his own lawyer, he has a fool for a client," is it not?

The CHAIRMAN. Is there any objection to suspending the examination at this point?

Mr. SHEARN. Not at all, but I wish to have the chairman understand why I ask these questions—because they refuse to produce the contracts.

The CHAIRMAN. Mr. Baer, could you without inconvenience appear before the Commission next Wednesday morning at 10.30?

938 Mr. BAER. Of course, I am perfectly willing to come. I can not say I can do it without inconvenience. It is a great inconvenience just now, with strikes on my hands—with the adjustment of those troubles in the Schuylkill region, which seem not to have been adjusted.

The CHAIRMAN. How would it suit you to say 2 o'clock?

Mr. BAER. I would prefer to have it at two o'clock.

The CHAIRMAN. It may be that your examination will not be concluded that afternoon.

Mr. BAER. I will take my chances of not getting through in the afternoon.

The CHAIRMAN. Very well. The examination of Mr. Baer is suspend until Wednesday of next week, at two o'clock. We will take a rec now until two o'clock.

At 1.10 o'clock p. m. the Commission took a recess until 2 o'clock.

939 AFTER RECESS.

2 O'CLOCK P. M

The CHAIRMAN. You may proceed.

Mr. SHEARN. I will call the secretary of the Delaware, Lackawan & Western, Mr. Chambers.

FRED F. CHAMBERS, a witness called on behalf of the complaina having been duly sworn, testified as follows:

Mr. SHEARN. You are the secretary of the Delaware, Lackawanna Western Railroad Company?

Mr. CHAMBERS. Yes, sir.

Mr. SHEARN. And have been how long?

Mr. CHAMBERS. Since 1872.

Mr. SHEARN. Have you custody of the contract of the Delawa Lackawanna & Western Railroad Company?

Mr. CHAMBERS. Yes, sir.

Mr. SHEARN. Have you been served with a subpœna to produce contracts for the purchase of anthracite coal by the Delaware, Lack wanna & Western Railroad Company entered into since January 1901?

Mr. CHAMBERS. Yes, sir.

940 Mr. SHEARN. Are there any such contracts, Mr. Chambers?

Mr. CHAMBERS. Yes, sir.

Mr. SHEARN. How many are there?

Mr. ROSS. I object to this on the grounds of its being irrelevant an immaterial to this inquiry.

The CHAIRMAN. And we overrule that objection, Mr. Ross.

Mr. ROSS. Then you may answer.

Mr. CHAMBERS. Five.

Mr. SHEARN. About five?

Mr. CHAMBERS. Yes; I will say five.

Mr. SHEARN. With what coal company are those contracts made?

Mr. ROSS. I object, if your honors please, on the ground of its bein irrelevant, incompetent, and immaterial as to whom they were mad with. The contracts were made in Pennsylvania, by a Pennsylvani corporation, with a Pennsylvania corporation, and therefore does not pe tain to interstate-commerce matters and is not competent to come befo this Commission.

The CHAIRMAN. You make the same objection that has bee made?

941 Mr. ROSS. Yes, sir.

Mr. SHEARN. You may answer.

Mr. ROSS. With the advice of counsel, witness declines to answer.

The CHAIRMAN. You decline to answer the question, Mr. Chambers

Mr. CHAMBERS. Yes, sir.

The CHAIRMAN. Notwithstanding those objections you are required by the Commission to state the names of the persons with whom those contracts were made.

Mr. CHAMBERS. I really could not tell you. Mr. Ross has them in his pocket.

Mr. ROSS. Under advice of counsel witness still declines to answer.

Mr. SHEARN. Is one with the Mount Jessup Coal Company?

Mr. ROSS. The same objection.

The CHAIRMAN. The objection and ruling and refusal of the witness to answer seems to cover that.

Mr. SHEARN. You have those contracts with you in court, have you?

Mr. CHAMBERS. They are in court.

942 Mr. SHEARN. They are in your custody; are they not?

Mr. CHAMBERS. No, sir.

Mr. ROSS. They are in my possession.

Mr. SHEARN. You delivered them to your counsel, did you not?

Mr CHAMBERS. Yes, sir.

Mr. SHEARN. And you are the person in whose lawful custody they are?

Mr. CHAMBERS. Yes, sir.

Mr. SHEARN. Please produce them.

Mr. ROSS. With the advice of counsel, he will decline.

Mr. SHEARN. I ask that he be directed to produce them.

Mr. ROSS. The same direction is given, and he declines.

The CHAIRMAN. The objection is overruled and witness is required and directed by the Commission to produce the contract.

Mr. ROSS. I have also the further objection which has heretofore been suggested by other counsel that these contracts are between the railroad company and third parties, who are not parties to this record.

943 All of the objections which have heretofore been made may be considered as made here at this time.

The CHAIRMAN. Counsel objects to the production of these contracts upon any and all of the grounds that have been heretofore presented respecting this class of evidence.

Mr. SHEARN. Do you refuse to produce the contracts, Mr. Chambers?

Mr. ROSS. Under the advice of counsel; yes.

Mr. SHEARN. Is that the case?

Mr. CHAMBERS. Yes, sir.

Com'r CLEMENTS. You brought them into court, before the Commission, in answer to your subpœna? They were in your possession?

Mr. CHAMBERS. Yes, sir.

The CHAIRMAN. You are required and directed by the Commission to produce them and you decline to do so?

Mr. ROSS. Under the same objection and under the same advice.

Mr. SHEARN. Your own signature appears on these contracts, does it not?

Mr. CHAMBERS. I think so.

944 Mr. SHEARN. You do not decline to produce them on the ground that it would incriminate you, do you?

Mr. CHAMBERS. I decline only on the advice of counsel.

Mr. SHEARN. The fact that it might incriminate you is not one of the reasons that you refuse to produce the contract, is it?

Mr. CHAMBERS. I do not think so.

Mr. SHEARN. Don't you know?

Mr. CHAMBERS. No; I do not know that I know much about the contract, except in a general way that I take care of them.

Mr. SHEARN. I want to know whether one of your grounds for refusing to produce them is because you think it would tend to incriminate you?

Mr. ROSS. No; those are not the grounds.

Mr. SHEARN. I want the witness to say.

Mr. CHAMBERS. On the advice of counsel, I decline.

Mr. SHEARN. Is one of the grounds that it would tend to incriminate you to produce them?

Mr. ROSS. No, sir; it is not.

Mr. SHEARN. I am asking the witness.

Mr. CHAMBERS. No, sir.

945 Mr. SHEARN. You are familiar with the contents of those contracts, are you not?

Mr. CHAMBERS. I hardly think I am, except in a general way.

Mr. SHEARN. You have also been required to produce contracts for the transportation of coal between the Delaware, Lackawanna & Western and other parties since January 1, 1901?

Mr. CHAMBERS. Yes, sir.

Mr. SHEARN. Are there any such?

Mr. CHAMBERS. I do not think there are.

Mr. SHEARN. There are contracts in existence, however, are there not?

Mr. CHAMBERS. I think so.

Mr. SHEARN. Is one of your contracts with the Plymouth Coal Company?

Mr. ROSS. I object. It is objected to as being irrelevant, incompetent, and immaterial.

Mr. SHEARN. This is for the transportation of coal, understand.

Mr. ROSS. I know of no contracts for the transportation of coal.

946 Mr. SHEARN. The witness does, Mr. Ross.

Mr. ROSS. There are no written contracts.

Mr. SHEARN. I object to his telling the witness what there are and are not. I ask him if one of them is not with the Plymouth Coal Company.

Mr. CHAMBERS. I could not tell you.

Mr. SHEARN. How many such are there?

Mr. CHAMBERS. I do not know.

Mr. SHEARN. In existence or in full effect in January, 1901?

Mr. CHAMBERS. I could not tell you.

Mr. SHEARN. And in full effect at the present time.

Mr. CHAMBERS. That don't come before me.

Mr. SHEARN. You know there are a number of such contracts in force?

Mr. CHAMBERS. I think so.

Mr. SHEARN. Have you any doubt about that?

Mr. CHAMBERS. No.

Mr. SHEARN. How many such contracts are there.

Mr. CHAMBERS. I could not tell you.

Mr. SHEARN. Are there a dozen?

Mr. CHAMBERS. Yes; I think there were.

947 Mr. SHEARN. Are you familiar with the terms of those contracts?

Mr. CHAMBERS. No, sir.

Mr. SHEARN. Don't you know that they are for the transportation of anthracite coal on the basis of sixty-five per cent of the tidewater price of the coal?

Mr. CHAMBERS. I do not. I have not looked at them since I filed them.

Mr. SHEARN. When did you file them?

Mr. CHAMBERS. I could not tell you; at various times.

Mr. SHEARN. Have you filed any in the last two or three years?

Mr. CHAMBERS. That I could not tell. I think not.

Mr. CHAMBERS. Within the last five years?

Mr. CHAMBERS. No; I am not sure.

Mr. SHEARN. Is your memory especially poor?

Mr. CHAMBERS. No; but that is not a part of my business. I take the contracts and file them.

Mr. SHEARN. But these are contracts that have your signature appended to them?

Mr. CHAMBERS. Yes, sir.

948 Mr. SHEARN. Do you read the contracts you sign?

Mr. CHAMBERS. No, sir. I see the president's signature, and that is enough for me.

Mr. SHEARN. You have not produced any of those contracts, have you, here in court?

Mr. CHAMBERS. The transportation contracts?

Mr. SHEARN. Yes, sir.

Mr. CHAMBERS. No.

Mr. SHEARN. Why not?

Mr. CHAMBERS. Because there were none.

Mr. SHEARN. That is, none that have been executed since January 1, 1901?

Mr. CHAMBERS. There are none.

Mr. ROSS. There are no contracts—no written contracts—for the transportation of coal in force now that you know of, are there?

Mr. SHEARN. He has already stated that there were.

Mr. ROSS. That he knows of.

The CHAIRMAN. He may have misunderstood the question.

Mr. ROSS. That you know of? The stenographer will please repeat the question.

949 The question was repeated, as follows: "There are no contracts—no written contracts—for the transportation of coal in force now that you know of, are there?"

Mr. ROSS. That is between our company and any shippers of coal on our line, other than the five purchase agreements which you refer to.

Mr. CHAMBERS. Those five.

Mr. ROSS. Those are all?

Mr. CHAMBERS. Those are all I know of.

Mr. Ross. That is all.

Mr. Shearn. What do you mean by "all you know of"—all you know the contents of?

Mr. Chambers. No, I picked those out because those were subsequent to the date of the subpœna.

Mr. Shearn. You have already testified that there were a dozen contracts for the transportation of anthracite coal that are in effect now.

Mr. Ross. I object.

Mr. Shearn. That is a statement merely on my part.

Mr. Chambers. I said I thought so, but am not certain. It is not a part of my business.

Mr. Ross. As a matter of fact, there are none.

950 Mr. Shearn. How about the Plymouth Coal Company?

Mr. Ross. That is only a verbal agreement for the transportation of coal, the same as we have with other shippers along the line. There are none except those five purchase agreements.

The Chairman. We understand you to say, Mr. Ross, that there are no contracts for the transportation of coal?

Mr. Ross. Only the ordinary arrangement.

The Chairman. There are contracts for the purchase of coal?

Mr. Ross. Yes, sir; five.

The Chairman. Which he declined to produce?

Mr. Ross. Yes, sir.

Com'r Fifer. Mr. Ross, I understand the witness to say that there were five contracts and a dozen other contracts.

Mr. Ross. He was mistaken in regard to that. The five contracts are for the purchase of coal from various companies along our line.

Com'r Fifer. Those twelve contracts that he spoke of—are there such contracts?

951 Mr. Ross. There may have been years ago, but not in force and existence now.

Mr. Shearn. He says there are verbal contracts now.

Mr. Ross. What I mean by that is that the only arrangement outside of these purchase agreements is under the regular tariff charges. That is to an extent a verbal and also a written agreement. A simple bill of lading is given when the coal is put in possession of the railroad company for transportation.

Mr. Shearn. Do you dispute the fact that you transport for the Plymouth Coal Company on the basis of sixty-five per cent of the tide-water price?

Mr. Ross. I understand there is no such contract with them now.

Mr. Shearn. Or any other company?

Mr. Ross. Nor with any other company.

Mr. Shearn. And that is the case with those five?

Mr. Ross. We purchased the output of those five.

Mr. Shearn. That might dispose of the necessity of having a contract.

Com'r Clements. You say there are no others, but have been others. Have there been others up to within a recent date?

Mr. Ross. No; not to my knowledge.

952 Mr. Shearn. Who is present that would have better knowledge on this subject than Mr. Chambers?

Mr. Ross. Probably Mr. Loomis.
Mr. SHEARN. E. E. Loomis?
Mr. Ross. Yes, sir.
Mr. SHEARN. I will call Mr. Post.

ORLANDO C. POST, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Mr. SHEARN. You are the auditor of the D., L. & W.?
Mr. POST. General auditor; yes, sir.
Mr. SHEARN. And have been for some time?
Mr. POST. Four years the 1st of June.
Mr. SHEARN. All of the books of account of the Delaware, Lackawanna & Western Railroad Company are under your custody and control?
Mr. POST. Yes, sir.
Mr. SHEARN. What are the different books that you keep known as? Describe the different books.
Mr. POST. There are a great many.
Mr. SHEARN. You have a cash book?
953 Mr. POST. Cash book, journal, ledger, voucher, records, bill registers, and various other books.
Mr. SHEARN. Name them.
Mr. POST. I could not name all of them.
Mr. SHEARN. Please do.
Mr. POST. Those are the principal books of record.
Mr. SHEARN. Now, then, when the D., L. & W. purchases coal for shipment over its road, into what book does the purchase transaction go first?
Mr. POST. The purchase transaction is covered by a voucher, which is entered in the voucher record.
Mr. SHEARN. Does not that transaction appear in any other book than the voucher record?
Mr. POST. The voucher record is summarized at the end of the month and appears on various accounts.
Mr. SHEARN. The first entry of the purchase of coal is made in the voucher record?
Mr. POST. From the voucher into the voucher record.
Mr. SHEARN. When the purchase is made, does it appear upon a paper you call voucher?
Mr. POST. Yes, sir.
954 Mr. SHEARN. What does that voucher state in general terms?
Mr. POST. It states the different sizes of coal purchased and the price and amount, and a voucher is drawn in favor of the party from whom the coal is purchased, and that voucher is passed through our account, approved by the president, and paid by the treasurer, and that is our receipt.
Mr. SHEARN. That voucher goes with the check for payment to the seller of the coal?
Mr. POST. Yes, sir.

Mr. SHEARN. And he signs it and returns it to you?

Mr. POST. To the treasurer.

Mr. SHEARN. Then is the voucher filed away in the book called the voucher book?

Mr. POST. No; it is transcribed in the voucher record and filed in my office.

Mr. SHEARN. What do you call the file—the voucher file?

Mr. POST. Yes, sir.

Mr. SHEARN. You keep them year in and year out?

Mr. POST. Yes, sir; in numerical order.

955 Mr. SHEARN. But they are all transcribed into the journal—into the voucher record?

Mr. POST. Yes, sir; voucher record.

Mr. SHEARN. From the voucher record into what book does the next entry go?

Mr. POST. The voucher entry covers all vouchers made for all purposes during the month, sometimes aggregating two thousand vouchers, and those vouchers are all distributed. They are charged to operating account or to some other account, and at the end of the month the total of those vouchers is made up in the form of a journal.

Mr. SHEARN. And finally goes into the general ledger?

Mr. POST. Yes, sir.

Mr. SHEARN. Is there a separate account in which you keep the vouchers showing the purchase of coal?

Mr. POST. No, sir.

Mr. SHEARN. They go into the general voucher book?

Mr. POST. Yes, sir.

Mr. SHEARN. How many voucher books have you covering the period from January 1, 1901, to the present time?

Mr. POST. I do not know. We have several. We use the loose-leafed system. A volume probably that thick and that long [indicating].

956 Mr. SHEARN. So you can pick out the separate leaves for a given month?

Mr. POST. Yes, sir.

Mr. SHEARN. And bring them right into court?

Mr. POST. Yes, sir.

Mr. SHEARN. That is, you could pick out the leaves for the months of April and May, 1901 and 1902, and January and February, 1903? Is that correct?

Mr. POST. Understand me that these voucher records do not show any details; only the firm in whose favor the voucher is drawn, their location, and the gross amount of the voucher. It don't show details.

Mr. SHEARN. In order to show the number of tons and sizes you would have to bring the vouchers?

Mr. POST. Yes, sir.

Mr. SHEARN. How many vouchers would you have to bring, do you suppose, covering the months of April and May, 1901, for the purchase of coal from those five companies?

Mr. ROSS. I want to raise an objection here to save time. This whole question is a matter which pertains to those contracts, and inasmuch as

the relevancy and materiality of those questions are to be certi-
957 fied up to the circuit court, it seems to me that in order to be consistent we must refuse to produce those vouchers and let that be certified up to the court and be passed upon with the other questions.

The CHAIRMAN. We have not come to the point yet of the witness being asked to produce the records. It might have a bearing upon the physical feasibility—these questions.

Mr. ROSS. Then he may answer. I will ask the stenographer to report the question.

Question repeated by the stenographer, as follows: "How many vouchers would you have to bring, do you suppose, covering the months of April and May, 1901, for the purchase of coal from those five companies?"

Mr. POST. I can only estimate that. It might vary, but I do not think it would exceed forty or fifty; maybe less than that.

Mr. SHEARN. And for April and May, 1902?

Mr. POST. It runs pretty much the same.

Mr. SHEARN. And for January and February, 1903?

Mr. POST. It runs about the same, month after month, except during strike months.

The CHAIRMAN. Would the voucher record show what the expenditure was for?

958 Mr. POST. It would show coal purchased.

The CHAIRMAN. It would show it was coal rather than something else, I suppose?

Mr. POST. Yes, sir.

The CHAIRMAN. I assume the voucher would show all the essential elements of the transaction—the voucher record?

Mr. POST. That is only a skeleton entry.

The CHAIRMAN. It would show the name of the seller?

Mr. POST. Yes, sir; and the location.

The CHAIRMAN. The address?

Mr. POST. Yes, sir.

The CHAIRMAN. And what it was—whether coal or something else?

Mr. POST. Yes, sir.

The CHAIRMAN. And the total amount?

Mr. POST. Yes, sir.

The CHAIRMAN. And the date, I suppose?

Mr. POST. Well, yes; it is all covered in the one month, you say.

Mr. SHEARN. In what book would the entries appear showing
959 the freight charges for the transportation of the coal referred to in those various vouchers?

Mr. POST. What coal? From individual operators, independent operators?

Mr. SHEARN. Yes, independent operators.

Mr. POST. That coal is regularly billed, and works right into our station accounts, the same as any other commodity.

Mr. SHEARN. You do not differentiate, then, at all, in your charges for freight?

Mr. POST. Understand, I am not referring to any coal we transport for ourselves, but for independent operators, coal we do not control; that

is not ours; it is regularly billed, at the tariff rate, and goes through the station agent's account, just the same as any other commodity.

Mr. SHEARN. It is regularly billed at the regular rate which you charge?

Mr. POST. The tariff rate.

Mr. SHEARN. That remains to be seen. It is billed at the regular rate you assume to charge them?

Mr. POST. Yes, sir.

Mr. SHEARN. And in what book do those charges appear?

960 Mr. POST. They appear in the record of the station agent at Hoboken, for instance, if billed to tide water.

Mr. SHEARN. That is, the amounts that the company actually received for the transportation of freight for independents who had not sold their coal to the company would appear, in the first instance, in the books of the station agent at Hoboken?

Mr. POST. Yes, sir.

Mr. SHEARN. And what is his name?

Mr. POST. S. H. Powell.

Mr. SHEARN. And what is the next entry? What is the next book into which those entries are transcribed?

Mr. POST. That is the end of it, so far as he is concerned. He makes up what we call abstracts of business received, and those are forwarded to the office of the auditor for freight and ticket accounts. He makes up his regular monthly account, which comes to a branch of my office, to the auditor of freight accounts.

Mr. SHEARN. And is then abstracted into some book?

Mr. POST. No.

Mr. SHEARN. Does it go into any book?

961 Mr. POST. It goes in with the general mass of business. It is boiled down and charged up to that agency.

Mr. SHEARN. Then in the next book—the book beyond those kept by the station master at Hoboken—it would be impossible to differentiate the items showing the receipts for freight from an independent and the receipts for freight on purchased coal, or any other coal, would it?

Mr. POST. Well, the agent at Hoboken would not have anything to do with coal purchased by the company so far as the freight is concerned. He only handles that billed in the regular way.

Mr. SHEARN. But in this book into which the entries go after you receive this abstract from the station master could you pick out the receipt or charges for freight on this independent coal?

Mr. POST. Oh, no.

Mr. SHEARN. That goes into the general mass?

Mr. POST. You would have to go back to original documents and get the waybills on file at Hoboken.

Mr. SHEARN. Or get the books of entry kept by the station master?

Mr. POST. Yes, sir.

962 Mr. SHEARN. So that no other books would be required to show that transaction?

Mr. POST. No, sir.

Mr. SHEARN. Now, as to coal that is purchased by the company under these five contracts, what entries are made showing the freight charges on that coal?

Mr. POST. That coal is merged in with that which we mine ourselves.

Mr. SHEARN. So your charge for the transportation of the coal you purchase under these five contracts is like the freight charged on your own coal, a mere matter of bookkeeping, is it not; because the Delaware, Lackawanna & Western Railroad Company is engaged both in the business of mining and transporting?

Mr. POST. We have separate accounts with our coal department.

Mr. SHEARN. You charge those things up against your coal department?

Mr. POST. Yes, sir.

Mr. SHEARN. And charge them up at some arbitrary figure, I suppose—so much per ton? Do you put in there the published tariff rate?

Mr. POST. Yes, sir.

Mr. SHEARN. But that is a mere matter of bookkeeping?

963 Mr. POST. I don't know what you call it; it is a business transaction.

Mr. ROSS. It is a mere matter of bookkeeping.

The CHAIRMAN. Is the form of that the same for your own coal as the coal of other shippers?

Mr. ROSS. It is the same as for the coal to be purchased from certain of the operators along our lines.

The CHAIRMAN. I understand; but are both the coal which you mine and the coal which you buy charged the same as the the coal of other shippers for transportation—the form?

Mr. ROSS. Yes, sir.

The CHAIRMAN. And is the bookkeeping just the same.

Mr. POST. Not exactly, for this reason——

The CHAIRMAN. You do have a waybill?

Mr. POST. Yes, sir; a waybill, but not a money waybill, and the freight that we charge against the coal department——

The CHAIRMAN. The waybill in the case of coal mined by the company and coal bought by the company simply show the tonnage, and that comes to your office, and that you charge up to the coal department for transportation?

Mr. SHEARN. I should like, then, to have produced on Thursday of next week the original vouchers for the months of April and May,

964 1901, and April and May, 1902, and January and February, 1903, showing the transactions for the purchase and transportation of coal bought from these independent, these five companies.

Mr. ROSS. In order that the record may be made here, I will object to to their production on the ground that they are irrelevant, immaterial, and incompetent at this hearing; they pertain to contracts which are between our company and third parties who are not parties to this record, and purely a State transaction, which has nothing to do with the inquiry before this Commission; and for all the other reasons which have heretofore been stated.

The CHAIRMAN. I suppose the subpœna served on this witness required him to produce them?

Mr. POST. No, sir.

Mr. SHEARN. It required him to produce all books of account.

Mr. POST. No.

Mr. SHEARN. We will have no misunderstanding about that. They were served on the treasurer, and then counsel informed me that the auditor had the custody of these books. If you make a point of that, I will have a subpœna served on him, unless you concede that a subpœna has been duly served on this witness.

965 The CHAIRMAN. We presume that you will decline to produce the books.

Mr. ROSS. Yes, sir.

The CHAIRMAN. And that is the important question, and it is not necessary to encumber the record with minor matters in regard to it.

Mr. SHEARN. Then it is conceded that a subpœna duces tecum was served on Mr. Post, auditor of the D., L. & W., who has custody of these papers called for, requiring him to produce at this hearing the vouchers for the months I have named, which he has declined to do; declined under advice of counsel to produce them upon the grounds stated by Mr. Ross. I ask the court to direct the witness to produce them.

Mr. ROSS. We will admit that a subpœna has been served.

Mr. SHEARN. As I have just stated?

Mr. ROSS. Only it was on Mr. Post.

Mr. SHEARN. I ask the court to direct the witness to produce the vouchers.

Mr. ROSS. We object on the same grounds.

The CHAIRMAN. We make the same ruling and the witness is

966 informed that he is required and directed by the Commission to produce the vouchers called for.

Mr. ROSS. The same objection is noted.

The CHAIRMAN. The same objection is made and overruled. The witness on advice of counsel declined to produce them.

Mr. SHEARN. Conceding that a subpœna duces tecum has been duly served upon Mr. Powell, the station master at Hoboken, who has the custody of the waybills, the books of original entry showing the charges for freight made against shippers of anthracite coal over your road during the months I have just mentioned?

Mr. ROSS. That is a very question. That does not pertain to these contracts for the purchase of coal between our company and these——

Mr. SHEARN. Will you produce those?

Mr. ROSS. I will require you to issue your subpœna.

The CHAIRMAN. Let us see about that, Mr. Shearn. You are entitled to have that evidence if material.

Mr. SHEARN. He says I must serve a subpœna.

Mr. ROSS. Serve a subpœna and I will inquire into the materiality of that question in the meantime. That raises a new question.

967 The CHAIRMAN. What is your contention in this particular regard, Mr. Shearn? Statements have been made here substantially by witnesses, and generally by counsel for the company, that all coal which this company carried for other shippers is carried at tariff rates.

Mr. SHEARN. I contend that it is not.

The CHAIRMAN. Do you claim that they are not charging tariff rates?

Mr. SHEARN. Yes, sir. If they were, I should think they would not be unwilling to produce those papers.

Mr. ROSS. If anyone here was making a proper or reasonable complaint, we will probably do so.

Mr. SHEARN. You are excused, Mr. Post.

The CHAIRMAN. Do you desire to ask Mr. Post any questions, Mr. Ross?

Mr. ROSS. No, sir.

The CHAIRMAN. Then you will be excused.

Witness excused.

968 E. B. STURGES, a witness called on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. What is your residence, Mr. Sturges?

Mr. STURGES. Scranton.

Mr. SHEARN. What is your business?

Mr. STURGES. I was for twenty years an attorney. For the last eight or ten years my interests in coal have been larger than any other.

Mr. SHEARN. With what coal companies are you connected, or in what coal companies are you interested?

Mr. STURGES. At present?

Mr. SHEARN. Yes, sir.

Mr. STURGES. I am interested in the Dolph Coal Company, the Clarence Coal Company, and the Pine Hill Coal Company. The two first are in the Lackawanna region and the Pine Hill is in the Schuylkill region.

Mr. SHEARN. The Dolph and Clarence——

Mr. STURGES. They are in the Lackawanna region and the Pine Hill in the Schuylkill region.

969 Mr. SHEARN. What railroads reach the Dolph and Clarence companies?

Mr. STURGES. The New York, Susquehanna & Western reaches both.

Mr. SHEARN. Any other?

Mr. STURGES. Not directly; no, sir.

Mr. SHEARN. Well, how near to the mines does any other company's tracks come?

Mr. STURGES. The Lehigh Valley short-cut line is very near the Clarence Coal Company—perhaps a half a mile—but they have no station there. There is a very heavy grade and they could not take any coal.

Mr. SHEARN. Is there any other company that has a line near there?

Mr. STURGES. Not near there.

Mr. SHEARN. How about the other mines—the Clarence mine?

Mr. STURGES. The Clarence is the one I spoke of.

The CHAIRMAN. In other words, the coal shipped from that mine must come over the Susquehanna road?

Mr. STURGES. Yes, sir.

Mr. SHEARN. What road reaches the Pine Hill mine?

970 Mr. STURGES. It is reached by the Pennsylvania Railroad—a branch from Pottsville—and also by the Philadelphia & Reading using the Pennsylvania branch, I believe.

Mr. SHEARN. Do you ship coal out of those three mines or out of any of those mines under contract with any of these railroads?

Mr. STURGES. Well, the Dolph has no contract for any considerable part of its tonnage. For the Dolph I prefer not to speak, because my interest is a small one. I am not an officer, but simply a director.

Mr. SHEARN. But you have personal knowledge, Mr. Sturges?

Mr. STURGES. To some extent.

Mr. SHEARN. Well, how about the others?

Mr. STURGES. As to the others, we sell our coal at the mines.

Mr. SHEARN. To what company does the Clarence sell its coal?

Mr. STURGES. To the Hillside Coal & Iron Company.

Mr. SHEARN. Under a written contract?

Mr. STURGES. Yes, sir.

Mr. SHEARN. When was that contract entered into?

971 Mr. STURGES. Very recently; not over two or three months ago, or a few months ago.

Mr. SHEARN. Have you it with you?

Mr. STURGES. Yes, sir.

Mr. SHEARN. Please produce it.

Mr. STURGES. I have no objection to producing it personally, but from what I have heard here to-day and seen in the papers that other parties have declined, I do not think I ought to produce it.

Mr. BROWNELL. That is, between what parties?

Mr. STURGES. Between the Clarence and the Hillside companies.

Mr. BROWNELL. What was the date of that contract, please?

Mr. SHEARN. I suppose, if he ought to have the date from the contract, I am entitled to have the contents. You must not have any objection to having him read the rest if he reads the date.

Mr. STURGES. I could not have given you the exact date without looking at the contract.

972 Mr. BROWNELL. I object on behalf of the Hillside Coal & Iron Company and on behalf of clients I represent, parties to this proceeding as well.

Mr. SHEARN. Name your clients, please—the Erie?

Mr. BROWNELL. I object on behalf of the Erie, and on behalf of all the parties I represent, to dragging into the record in this case matters I do not deem to be relevant, material, or proper. That is the objection that has been made several times, as the Commission will understand.

The CHAIRMAN. It is the same question we have had.

Mr. BROWNELL. Yes, sir; it is the same. And, furthermore, this is a contract between persons not parties to this record or company, the stock of which is not owned in its entirety by any parties to this record, but stock which is owned by a large number of purchasers for value, by the public in different parts of the United States, and we think it is dragging in an outside matter which has no proper relevancy at all, and the witness should not produce it, or be required to.

Mr. SHEARN. In the first place, I challenge the gentleman's right to make the objection. He does not appear here as counsel for this
973 witness. He appears here as counsel for the Erie Railroad Company. Now, then, we ought to know at the outset that he represents the Hillside Coal & Iron Company before this Commission in making this objection.

Mr. BROWNELL. If you want to know, I stated that for the purpose I was counsel for that company, and I specially appeared not in this proceeding, but to object on his behalf. I specially object on his behalf without appearing in this proceeding in the usual way.

Mr. SHEARN. Here is the witness having a contract in his pocket and does not raise any objection himself; I ask that he be directed and required to produce it.

The CHAIRMAN. What is the contract?

Mr. STURGES. For the sale of our coal.

The CHAIRMAN. To this Hillside Coal Company?

Mr. STURGES. Yes, sir.

The CHAIRMAN. And you have it with you?

Mr. STURGES. Yes, sir.

The CHAIRMAN. And you are asked to produce it?

Mr. STURGES. Yes, sir.

Mr. SHEARN. You are subpœnaed to produce it.

974 Mr. STURGES. I want to say that I am perfectly willing to produce it, except that other parties have objected to producing them.

Mr. SHEARN. You are a man of independence, are you not?

Mr. STURGES. I think so, but I have no counsel here.

Mr. SHEARN. You say you are a lawyer?

Mr. STURGES. No; I have not been for ten years, I am glad to say.

Mr. BROWNELL. I think he knows the question has been raised by other parties, who have declined to produce them.

The CHAIRMAN. He has a perfect right to put his refusal on that ground.

Mr. STURGES. I simply feel I can not do it as a matter of honor until the other parties produce their contracts or I am compelled to. When either of those things happen I will be very happy to do so.

The CHAIRMAN The witness has stated that such a contract as described was made and that he has it in his possession. Being asked to produce it and put it in evidence, he declines to do so for the

975 reasons he has stated. The Commission requires and directs him to produce the contract and he refuses.

Mr. SHEARN. I would like to have that very matter settled, if this witness is going to defy this Commission and decline to produce his contract?

Mr. CAMPBELL. I object to that statement.

Mr. SHEARN. It is not a matter that we can pass off so lightly here. It is a contract between the Hillside Coal & Iron Company and this gentleman, who carries on great mining interests up there in the Lackawanna region——

Mr. STURGES. Not great.

Mr. SHEARN. Well, considerable. And he is a free agent, or supposed to be, and has a right to produce this contract if he sees fit; and he states that he is willing to produce it; and now, after stating that he is willing to produce it, the counsel for the Erie gets up and intimates that he should not do so, and then he refuses to do so.

The CHAIRMAN. That is not a correct statement of his testimony, as I understand it. He stated, when the question was first put to him,

that so far as he was personally concerned he had no objection
976 to producing it, and, for reasons stated, he felt in honor bound not to do so; and he has a right to decline to produce the contract on those grounds.

Mr. SHEARN. It is a striking illustration of how these contracts sap the independence of people with whom they are made.

Mr. STURGES. No one has suggested that I should or should not produce the contract. I have not spoken to any attorney, except Mr. Gowen spoke to me a moment as I came in; but I feel, on the ground stated, I have no right to produce it. I am very sorry that I can not produce it.

The CHAIRMAN. Mr. Sturges seems to be perfectly fair about this.

Mr. SHEARN. It is strange why a man in his position should not want to file a contract which is his contract.

Mr. BROWNELL. Perhaps the grounds that he has given do not appeal to the gentleman, but they appeal to the Commission as proper grounds.

Mr. SHEARN. Mr. Sturges, passing from that now; as a matter describing your course of business, state, please, on what terms
977 you dispose of your coal from the Clarence mine to the New York, Susquehanna & Western or to the Hillside Coal & Iron Company?

Mr. STURGES. We only commenced shipping the Clarence Coal Company the first of April. The Clarence Coal Company is simply the remains of three or four mines; I have been trying to save a large amount of money I put in. We built a breaker and only commenced shipping on the 1st day of April, so we have not had any return—yes; we have had a couple of hundred of dollars for coal sold in March. The terms are set forth in that contract.

Mr. SHEARN. Does the Hillside Coal & Iron Company make returns to you of the proceeds from the sale of your coal at tide water from time to time?

Mr. STURGES. They have not gotten that far as yet. As I say, we only began on the 1st day of April. I think there was a hundred tons or so shipped in March, the last day of March.

Mr. SHEARN. What was the company that the Clarence Company succeeded?

Mr. STURGES. The Gardner's Creek Coal Company, which
978 failed, and cost me $100,000, nearly. That succeeded the Westminster Coal Company, which also cost me from $25,000 to $50,000. I am now trying to save a part of it by the Clarence Coal Company.

Mr. SHEARN. Under what course of business did the Gardner's Creek Coal Company dispose of its coal? Did they dispose of it to the Hillside Coal & Iron Company?

Mr. STURGES. No; they sold their coal to the New York, Susquehanna & Western Coal Company, I think.

Mr. SHEARN. Under a contract?

Mr. STURGES. I presume so; I was not as intimately connected with that. I was simply a backer in that.

Mr. SHEARN. Did you ever see the contract, Mr. Sturges?

Mr. STURGES. Yes; I think so.

Mr. SHEARN. What were the terms of it?

Mr. STURGES. I could not say; that has long ago expired and is not in existence.

Mr. SHEARN. Is a part of the Dolph Coal Company output shipped under a contract, a purchase contract?

Mr. STURGES. There is a purchase contract. I speak in a general way of the Dolph. I am not an official of that. The officers and
979 superintendent of that can tell better, but, as I understand it, about twelve per cent of the Dolph colliery output is under contract.

Mr. SHEARN. And to what company?

Mr. STURGES. To the New York, Susquehanna & Western Coal Company.

Mr. SHEARN. And that is a written contract, is it?

Mr. STURGES. It was originally.

Mr. SHEARN. Do you recollect when it was entered into?

Mr. STURGES. Many years ago.

Mr. SHEARN. Is it a percentage contract?

Mr. BROWNWELL. That is incompetent, clearly.

Mr. SHEARN. Now, the Pine Hill Company, in the Schuylkill region, how does it dispose of its product?

Mr. STURGES. We mine about half of our coal from the Philadelphia & Reading Coal & Iron Company plant.

Mr. SHEARN. Paying them a royalty?

Mr. STURGES. Yes, sir. We deliver the same quantity of coal to them; we are obliged to and want to. As we mine from their lands, we ship over their roads.

Mr. SHEARN. Under a contract?

Mr. STURGES. Yes, sir.

980 Mr. SHEARN. A written contract?

Mr. STURGES. Yes, sir.

Mr. SHEARN. Have you that with you?

Mr. STURGES. Yes, sir.

Mr. SHEARN. When was it entered into?

Mr. STURGES. Between two and three years ago. I did not dare look at the date of the contract.

Mr. SHEARN. Please produce it.

Mr. STURGES. Please excuse me, for the same reasons as I have stated.

Mr. SHEARN. You have been duly subpœnaed to produce it?

Mr. STURGES. Yes, sir.

Mr. SHEARN. And you have it in court?

Mr. STURGES. Yes, sir.

Mr. SHEARN. And decline to produce it?

Mr. STURGES. Yes, sir.

Mr. SHEARN. For the same reason?

Mr. STURGES. Yes, sir.

Mr. SHEARN. I ask that the witness be directed to produce it.

981 The CHAIRMAN. Witness is directed and declines.

Mr. SHEARN. Now, as to the balance of the product of the Pine Hill?

Mr. STURGES. That is sold at the breaker to Stickney, Cunningham & Company.

Mr. SHEARN. Are they sales agents for the Susquehanna Coal Company?

Mr. STURGES. No, sir.

Mr. SHEARN. Or the Pennsylvania Railroad Company?

Mr. STURGES. I do not know. I do not know that they sell any Pennsylvania.

Mr. SHEARN. Is that under a contract with them?

Mr. CAMPBELL. I raise the same question. I object to the introduction in evidence of immaterial testimony as to the private interests of independent operators in the Schuylkill region. That is the same point upon which this question has arisen. These contracts are claimed to be immaterial here. The Commission has disagreed with us, we regret, and has overruled our judgment and has very courteously and very properly permitted us to raise this question in an orderly way, as pointed out by the statute.

982 Mr. SHEARN. Is your contract with Stickney, Cunningham & Company a written contract?

Mr. STURGES. Yes, sir.

Mr. SHEARN. That is, the Pine Hill Company's contract with Stickney, Cunningham & Company is in writing?

Mr. STURGES. Yes, sir.

Mr. SHEARN. And was entered into about what time?

Mr. STURGES. The renewal of the original contract, some three or four years old, was made within a few months.

Mr. SHEARN. Have you it with you?

Mr. STURGES. No, sir; I was not subpœnaed to produce it, and did not suppose it had anything to do with this hearing. As to Stickney & Cunningham, I don't know that they have anything to do with it.

Mr. SHEARN. Now, then, those are the only mining companies that you are connected with at the present time?

Mr. STURGES. Yes, sir.

Mr. SHEARN. What did you have to do with the organization of the proposed New York, Wyoming & Western Railroad Company, Mr. Sturges?

983 Mr. STURGES. I circulated the original paper on which we secured the tonnage and most of the subscription, and I was president.

Mr. SHEARN. At what time did that enterprise have its inception?

Mr. STURGES. I can not give you exact dates.

Mr. SHEARN. Do you recollect the occasion of the sale of the Simpson & Watkins collieries to the Temple Iron Company?

Mr. STURGES. Yes, sir. It was at least a year previous to that, I think.

Mr. SHEARN. That was in January, 1899. And so you think it was during the year 1898, if that date is correct, that the New York, Wyoming & Western enterprise had its inception?

Mr. STURGES. I have those dates. I have those original papers still, but have not looked at them for some time.

Mr. SHEARN. In 1898, and for some years immediately prior thereto, the majority of operators in the Lackawanna region were selling their coal to coal companies owned by railroad companies, under percentage contracts, were they not?

Mr. STURGES. Yes, sir; I think so.

Mr. SHEARN. And was there, at that time, a general dissatisfaction with the terms of those contracts among you all?

Mr. STURGES. Yes, sir.

984 Mr. SHEARN. You thought you were getting too little for your coal and the railroad was getting too much for transporting it?

Mr. STURGES. Yes, sir; we thought we were getting too little for our coal at least; that the railroad companies could lose a little more, or else get a price for their coal that would enable them to give us more. During those years—if you will allow me to say—during those years about that time the price of coal was extremely low and very few collieries, very few individual collieries, I think I am safe in saying, were paying expenses. We felt that the railroad companies were slaughtering our coal at any price they pleased, at prices that we had nothing to say about, and were paying us this low percentage; we simply wanted a lower freight rate or increase in the price of coal that would enable us to live; some collieries were living and making some money, but I think most of us were not. I know I was not in two or three collieries.

Mr. SHEARN. Some of you were giving up as much as fifty per cent of the tide-water price of coal to the coal company?

Mr. STURGIS. No, sir; I do not know of anybody.

985 Mr. SHEARN. But some were giving up as much as forty-five per cent?

Mr. STURGIS. No; the prevailing rate at that time was sixty per cent; I think there may have been one or two collieries at fifty-five.

Mr. SHEARN. Mr. A. A. McLoud was president of the Reading at that time, was he not?

Mr. STURGIS. No; that was after Mr. McLoud's time.

Mr. SHEARN. Did you have any negotiations with the railroads looking toward getting a better rate prior to that?

Mr. STURGIS. I might say personally that I had none. We appointed an executive committee that, I think, had introduced—in fact I know from hearsay that they had introduced——

Mr. SHEARN. Who were they, please?

Mr. STURGIS. Mr. T. H. Watkins, afterwards a member of the Coal Strike Commission, Mr. Thomas E. Jones, I think, Mr. E. L. Fuller, at one time or other—I think they were our executive committee.

Mr. SHEARN. You did not succeed in getting better terms in that year, did you—better contracts?

Mr. STURGIS. Not at once; no, sir.

986 Mr. SHEARN. Was the New York, Wyoming & Western Railroad Company incorporated?

Mr. STURGIS. Oh, yes, sir.

Mr. SHEARN. Under the laws of what State?

Mr. STURGIS. Pennsylvania.

Mr. SHEARN. That was in 1898?

Mr. STURGIS. I think so; I can only speak generally.

Mr. SHEARN. That was to be a railroad corporation?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. What was the capital stock?

Mr. STURGIS. I would not like to state the amount. My impression is a million dollars of stock. I can not say; that is my impression. It

has been an unpleasant memory to me and I have got it out of my mind all I could.

Mr. SHEARN. You were the president of the company, weren't you?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. From what point was the road to run, what region——

987 Mr. STURGIS. The point from the Susquehanna River near Pittston, Pennsylvania, to a point on the Delaware River near Belvediere, New Jersey, originally.

Mr. SHEARN. Did you have surveys made for a line?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. All the way down?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. You spent a good deal of money on the enterprise?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. Was the capital stock generally subscribed to by the independent operators in your region?

Mr. STURGIS. Yes, sir; we had about, I think, three quarters of a million subscribed.

Mr. SHEARN. Did the various independent operators in your region pledge the output of their respective mines to this railroad when it was completed?

Mr. STURGIS. Some of them; yes, sir.

Mr. SHEARN. Wasn't that the case with a large majority in the Lackawanna region?

Mr. STURGIS. Not a large majority in tonnage.

Mr. SHEARN. But of individuals?

988 Mr. STURGIS. No; not with a large majority of the tonnage of individual operators, but with most of the tonnage who were not under contract.

Mr. SHEARN. How much tonnage was that approximately?

Mr. STURGIS. That we were never able to estimate exactly; we always thought we had from two to five millions tons.

Mr. SHEARN. And those papers I call pledges were in writing, weren't they?

Mr. STURGIS. The original subscription agreement was in writing.

Mr. SHEARN. And that carried with it a pledge of the output of the mines?

Mr. STURGIS. Yes, sir; in most cases.

Mr. SHEARN. Were Simpson & Watkins parties to that proposed railroad organization?

Mr. STURGIS. They were subscribers.

Mr. SHEARN. Did they pledge the output of their mines to it?

Mr. STURGIS. A certain portion of it; yes, sir; some they could not.

Mr. SHEARN. But such part as was not governed by contracts then existing?

Mr. STURGIS. Most of that was pledged.

989 Mr. SHEARN. Their collieries had an output of over a million tons a year, didn't they?

Mr. STURGIS. Well, I do not think so.

Mr. SHEARN. Well, about how much should you say?

Mr. STURGIS. Of course, we were never able to get the exact output of any colliery; you can not do it to-day; I do not think much over half the amount you said.

Mr. SHEARN. Over half a million?

Mr. STURGIS. I do not think so. I do not think we ever counted on their collieries for over about half a million; that is my recollection.

Mr. SHEARN. But the total output of all their collieries amounted to more than that, didn't it?

Mr. STURGIS. More than that; yes, sir.

Mr. SHEARN. How active were Simpson & Watkins in this enterprise?

Mr. STURGIS. They were very active.

Mr. SHEARN. They were influential and interested supporters of it?

Mr. STURGIS. We were all interested.

Mr. SHEARN. They were too, weren't they?

Mr. STURGIS. Yes.

Mr. SHEARN. The railroad was never built, was it?

Mr. STURGIS. No, sir.

990 Mr. SHEARN. When was the New York, Wyoming & Western plan given up definitely?

Mr. STURGIS. Definitely and finally not over a year ago; about a year.

Mr. SHEARN. Definitely and finally a year ago?

Mr. STURGIS. Yes, sir; that is, we surrendered our charter and sold our rights.

Mr. SHEARN. You had bought rails, had you?

Mr. STURGIS. Yes, sir; we had 7,000 tons of rails, at $18 a ton.

Mr. SHEARN. And paid for them?

Mr. STURGIS. Yes, and paid for them.

Mr. SHEARN. Had you bought any other equipment for building the road?

Mr. STURGIS. Not to a large amount.

Mr. SHEARN. You had engaged the services of engineers?

Mr. STURGIS. Oh, yes, sir.

Com'r FIFER. Secured the right of way?

Mr. STURGIS. Yes, sir; a portion of it; we had several difficult points that troubled us, and I think our road would have been built if we had not been delayed by two or three vital points that we could not

991 get title to and which we did not dare to take possession of for fear of extreme damage——

Com'r FIFER. Did you start in the enterprise in good faith?

Mr. STURGIS. Absolutely; yes, sir; as far as I am concerned; and I think that is true of nearly every one of us.

Mr. SHEARN. You did not propose to sell out to anybody, did you?

Mr. STURGIS. No, sir; not for one moment.

Mr. SHEARN. It was not a bluff or a bit of sandbagging on your part, was it?

Mr. STURGIS. No, sir; we are not all sandbaggers, if we do come from Pennsylvania.

Mr. SHEARN. After the sale of the collieries of Simpson & Watkins to the Temple Iron Company, the efforts to build this road were not so active, were they?

Mr. STURGIS. Yes; just as active, and more active than ever.

Mr. SHEARN. On whose part?

Mr. STURGIS. On our part. Simpson & Watkins withdrew, resigned from our board of directors, and of course we felt the loss severely for a while, but we kept at it, and secured other interests that we hadn't
992 been able to get before and went at it again.

Mr. SHEARN. When did you cease active efforts to build the road?

Mr. STURGIS. I can not give you the exact time, but when the companies agreed to reduce our freight rates or rather increase the price that they paid to the colliery on the sales contract to 65 %, a good many of our people felt that was all that we could get by building a road, and we abandoned it.

Mr. SHEARN. You started to say when the companies reduced your freight rates?

Mr. STURGIS. Well, I did not mean——

Mr. SHEARN. That was a slip of the tongue?

Mr. STURGIS. No; it is not a slip of the tongue; it amounts, of course——

Mr. SHEARN. This time you speak of was March about, 1901. It amounts to what, were you going to say?

Mr. STURGIS. I say, I suppose from your way of thinking or putting it, that it would be the same thing.

Mr. SHEARN. Yes; that's it.

Mr. STURGIS. Well, our contracts are absolutely the sale of the coal at the breaker; we have nothing to do with the freight rates.

993 Mr. SHEARN. They are absolute contracts for the sale at the breaker?

Mr. STURGIS. Yes; those I have spoken of.

Mr. SHEARN. Now, you ought to tell me on what basis?

Mr. STURGIS. You should not take advantage of my good nature.

Mr. SHEARN. I have not taken advantage, but I thought you had a change of heart in the meantime.

Mr. STURGIS. No.

Mr. SHEARN. You continued your bona fide purpose to build this railroad up to the time that you got the presidents of the different railroads to make these new contracts with you?

Mr. STURGIS. That would hardly be the correct way of putting it. Of course, it was a great effort for us. We had to raise a large amount of money. We had these troubles over the right of way. One after another of our supporters or our operators, you might say, pulled out; they said "Why, the company is willing now to give us a better price for our coal, and it is better than we can do if we build the road." One after another dragged off, *dragged off*, and the first we knew they insisted on selling our rights; two or three or four of us fought
994 that, but we saw there was no use, and sold. We felt that the road had accomplished certainly a great deal in giving us what we thought was a fair price for our coal.

Mr. SHEARN. When it became apparent that there was some prospect of getting the railroad companies to make a better contract with you, you appointed a committee, didn't you, to go and confer with the railroad presidents?

Mr. STURGIS. No, sir; not on that point; no, sir.

Mr. SHEARN. Well, is it not a fact that Mr. William Connell and Dr. Howe and Mr. Cameyer were appointed a committee by the independent operators to go to Philadelphia and attend a series of conferences with the railroad presidents?

Mr. STURGIS. Dr. Howe was never interested in our road. Mr. Connell was never interested in our road, except he was a subscriber, and he never attended any meeting.

Mr. SHEARN. I am not speaking of your road now. I say when one by one these men had begun to to drop away from you like Simpson & Watkins and the others, didn't the independent operators throughout the various regions appoint a committee of three to go to Philadelphia and interview the presidents of these railroads and see if they could not make them agree to a better form of contract.

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Mr. STURGIS. I thought you were asking me about the New York, Wyoming & Western Railroad.

Mr. SHEARN. I have been; but now I am asking you about some lines——

Mr. STURGIS. I understand what you mean. I think you mean the Independent Coal Operators' Association.

Mr. SHEARN. Yes, sir.

Mr. STURGIS. Not half of the members of that—well, not more than half, I think, of the members of that association were ever interested in our road.

Mr. SHEARN. That included other fields?

Mr. STURGIS. The Scuylkill field.

Mr. SHEARN. That included all the fields—there was such an association?

Mr. STURGIS. There was.

Mr. SHEARN. Were you a member of it?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. Did that association appoint a committee, as I have already asked?

Mr. STURGIS. I only know that by hearsay. I was not at any meeting where such a committee was appointed.

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Mr. SHEARN. Were you at any meeting where such a committee reported?

Mr. STURGIS. Yes, sir; I was.

Mr. SHEARN. Who made the report?

Mr. STURGIS. I think Dr. Howe, but I am not sure; it is some time ago. But the two institutions were absolutely distinct, they had nothing to do with each other.

Mr. SHEARN. Oh, I understand. What did Dr. Howe report to you?

Mr. CAMPBELL. I object; a written report can not be proved in this way.

Mr. SHEARN. Was it a written report?

Mr. STURGIS. I do not remember.

Mr. SHEARN. Now, then, what did he report to you?

Mr. STURGIS. I can not tell you, sir; I do not remember enough to be willing to put it on record.

Mr. SHEARN. Well, it had to do with a new contract, didn't it, and the terms of a new contract?

Mr. STURGIS. You mean for the general coal business?

Mr. SHEARN. Yes, sir.

Mr. STURGIS. Yes, sir; the statement, in a general way, was that the companies were willing to pay this increased rate for coal.

997 Mr. SHEARN. And what was the increased rate they were willing to pay?

Mr. STURGIS. My impression is, 65%; that is my recollection.

Mr. SHEARN. And after that report did you act upon it?

Mr. STURGIS. The association may have accepted the report; I do not remember.

Mr. SHEARN. Well, did the companies in which you were interested accept the report by entering into the contracts?

Mr. STURGIS. No, sir; you could not say they accepted the report, because it was all done—all the contracts were made for the sale of our coal were made individually—all that I knew anything about at least. For instance, one has only been made, as I told you, only two months ago.

Mr. SHEARN. I understand; but as the result of this committee meeting with these railroad presidents, which reported to you at this meeting, you learned that the railroads were willing to make a better contract. Now, then, you subsequently did make a better contract, didn't you?

998 Mr. STURGIS. We subsequently made our contracts—not as the result of the report of this committee; we had information entirely outside of them. Very little information came to me from them. I think I was only present at one meeting where the matter was talked about. My information of their willingness to pay a higher price for my coal was derived from other sources entirely.

Mr. SHEARN. Yes; but it was after this committee made this report that your new contracts were entered into?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. Did you have anything to do with the projected Delaware Valley & Kingston Railroad Company?

Mr. STURGIS. No; I think I could say I did not. We expected that our tonnage would go in with the Pennsylvania tonnage——

Mr. SHEARN. There was up in your region, operated by the Pennsylvania Coal Company, a road called the Erie & Wyoming Valley, was there not?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. That ran to Lackawaxen?

Mr. STURGIS. It ran from Scranton to Hawley.

Mr. SHEARN. To Hawley?

999 Mr. STURGIS. Yes.

Mr. SHEARN. Where was the Delaware Valley & Kingston Road to run?

Mr. STURGIS. You are asking me now what others can tell you better than I can. As a matter of report, it was to run from Lackawaxen, I think, to Kingston, New York.

Mr. SHEARN. To Rondout, New York?

Mr. STURGIS. They are the same, are they not?

Mr. SHEARN. Very near the same. Along the road of the old Delaware & Hudson Canal?

Mr. STURGIS. Yes, a part way, I think.

Mr. SHEARN. Were you interested in the building of that road or in that project?

Mr. STURGIS. Not at all, except as a possible outlet for our coal.

Mr. SHEARN. Did you have any conference with Mr. E. L. Fuller on that subject?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. Did Mr. Fuller tell you what he was doing?

Mr. STURGIS. Yes, sir; sometimes, and sometimes he would not.

1000 Mr. SHEARN. Did you tell Mr. Fuller that if a road were built that you would turn over to that company, or to the Erie & Wyoming Valley, or to the Pennsylvania Coal Company the output of your mines?

Mr. STURGIS. The output, I think, of only one mine at that time.

Mr. SHEARN. Of one mine?

Mr. STURGIS. I think that is all.

Mr. SHEARN. You did that by virtue of a written instrument, didn't you?

Mr. STURGIS. No, sir.

Mr. SHEARN. You did not?

Mr. STURGIS. After the Kingston & Delaware Valley scheme came up, we were very much disorganized; we had been losing our partisans, our subscribers, our coal pledged.

Mr. SHEARN. How had you been losing them?

Mr. STURGIS. By people saying—for instance, Mr. Jermyn, who was on the stand this morning here; his father said he had been waiting long enough, and he was not going to have anything to do with a new road; he would not put any more money in it; if he could get a fair rate for his coal he was going to——

1001 Mr. SHEARN. That is, he would lose his men by entering into this contract with the coal companies?

Mr. STURGIS. He said he would not have anything to do with it; he would not put any money in it; he said it had run so long it would not pay a subscription, and the companies were offering to do what was fair, and he was going to close with them. When the Delaware & Kingston Valley came up, some of us who had been faithful and wanted to see that go through, they would have got some of our tonnage if they had built the road.

Mr. SHEARN. In fact, as you say, you did tell Mr. Fuller you would give him a tonnage in each one of your mines?

Mr. STURGIS. You are putting it in too definitely; we simply gave him reason to believe that one of our mines, the tonnage of which was free or part free, would go over the new road.

Mr. SHEARN. That was definiteness enough, coming from you?

Mr. STURGIS. Yes.

Mr. SHEARN. You would have carried it out if you could?

Mr. STURGIS. Oh, I would, but I have tried to carry out some things which I have not been able to.

1002 Mr. SHEARN. Do you know that other operators in your region pledged the output of their mines to the Delaware Valley & Kingston enterprise?

Mr. STURGIS. I could not answer that question; that would be only hearsay.

Mr. SHEARN. That road was never built, was it?

Mr. STURGIS. No, sir.

Mr. SHEARN. Was the last you heard of that enterprise when the Pennsylvania Coal Company was bought by the Erie?

Mr. STURGIS. About that time; yes, sir.

Mr. SHEARN. That was in January, 1901?

Mr. STURGIS. I do not know the date.

Mr. SHEARN. Do you know of any operator of coal mines who does not dispose of his product, in your region—who does not dispose any of his product to a railroad coal company?

Mr. STURGIS. I only know those things by hearsay. Of course my knowledge of anybody else's business is hearsay, and I could not say that I do. I know some that I think do.

1003 Mr. SHEARN. Mr. Sturgis, have you any say as to the amount of coal that any one of these mines you are interested in shall produce in a year? Is that under your control now?

Mr. STURGIS. Well, it has been so far. They have been able to take all I could produce from any——

Mr. SHEARN. Yes; but it is in your power to determine the amount of coal that shall be produced by any of the companies you are interested in?

Mr. STURGIS. You mean the amount of coal they will produce in any year?

Mr. SHEARN. Can you? Is it in your power to determine the output of any of these mines under the arrangement which you have now?

Mr. STURGIS. I should have to look at my contract to tell that.

Mr. SHEARN. Don't you know, sir; don't you know as a matter of fact, irrespective of your contract?

Mr. STURGIS. No, sir; the point has not come up. Since these contracts have been made they have taken all that we could produce in these two collieries.

Mr. SHEARN. Well, the amount that is produced and that comes out of your colleries depends on the number of cars the railroad companies sends there, does it not?

Mr. STURGIS. Yes, sir.

1004 Mr. SHEARN. And it is in their control, is it not; not under your control?

Mr. STURGIS. So far it has been entirely in our control. We have had all the cars for these two collieries that we could load.

Mr. SHEARN. They have given you the cars you have asked, but you have no way of compelling them to give you cars?

Mr. STURGIS. I think I have.

Mr. SHEARN. How?

Mr. STURGIS. You would have to see my contract and I would have to see it to tell you.

Mr. SHEARN. Is not that determined by the colliery capacity of your

Mr. STURGIS. The quantity?

Mr. SHEARN. Yes.

Mr. STURGIS. No, sir.

Mr. SHEARN. Don't they agree to buy just so much of your coal as is a just proportion of all that they agree to buy measured by the capacity of your colliery?

Mr. STURGIS. No, sir; I think not in either of my contracts; but, as I say, I would prefer to take that from the contracts.

1005 Mr. SHEARN. Have you anything to say as to where your coal is to go?

Mr. STURGIS. I don't want anything to say.

Mr. SHEARN. Have you anything to say about it?

Mr. STURGIS. No, sir; I don't want anything to say about it.

Mr. SHEARN. Do you have anything to say as to what price shall be charged for your coal?

Mr. STURGES. What price shall be charged?

Mr. SHEARN. Do you fix the price your coal is going to bring at tide water?

Mr. STURGIS. The contract states how the price is fixed. I am not trying to be technical, Mr. Shearn.

Mr. SHEARN. But tell me, sir, do you fix the price at which your coal is to be sold at tide water? I am not talking about the percentage that you are to get. We all understand what that is without your saying it, but what I want to know is whether you have anything to say about the price that shall be charged at tide water for the product of your mines.

Mr. STURGIS. No, sir.

Mr. SHEARN. No?

1006 Mr. STURGIS. No, sir; but I am under the present situation of the last year or two; I might say, they are paying a perfectly decent price for coal that I am perfectly willing to leave it to them, which I was not willing to do for the previous ten years.

Mr. SHEARN. That is, the existing system has brought about a higher price for coal?

Mr. STURGIS. A good many different things; a rise of thirty per cent in the price of labor has made necessary a higher price of coal.

Mr. SHEARN. But I say you are confident that the situation as now existing, created by all these things we have been discussing here, is going to bring about a higher price for coal?

Mr. STURGIS. I do not believe anthracite coal will ever go down to where it was; I hope not; if it does, I am bankrupt. As I have said, the demand for coal has increased; the supply of coal can never materially increase, in my judgment; the demand is increasing, the value of it recognized; the enormous increase in the price of labor; the increase in the expense of mining; the conditions are so absolutely different from what they were five or ten years ago, or fifteen years ago, when I first went into the coal business, that I have no great fear of any great

1007 reduction in the price of coal. I believe it to be just as low to the consumer—that is, within a small sum—just as low as it has ever been; but the middleman will not make the money that they used to make out of the operators, if not out of the carriers; I do not know anything about the carriers. I believe conditions are so changed that

anthracite coal can never go much below its present price; if it does it will ruin——

Mr. SHEARN. But there has been a vast change in the last five years you say?

Mr. STURGIS. A vast change, supply and demand, wages, expense, everything.

Mr. SHEARN. And centralization of control.

Mr. STURGIS. I suppose that may have something to do with it. I am not in it.

Mr. SHEARN. If you were selling your own coal, marketing your own coal, you would have to pay a commission for selling it, wouldn't you, at tide water?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. Do you know how much that commission ordinarily amounts to?

1008 Mr. STURGIS. I do not know. It runs from ten cents, twelve cents—I have paid as high as twenty-five cents.

Mr. SHEARN. You mean a ton commission?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. If you were marketing your own coal you would have to stand the cost of putting it from the cars into the barges, wouldn't you?

Mr. STURGIS. I suppose so.

Mr. SHEARN. Well, you know that, of course, don't you?

Mr. STURGIS. Well, I am glad to say I never had much experience. When we were all turned loose in January we thought we were going to make a lot of money, and some of us did, and just as a matter of personal history I will state this, we sold then on commission, and some of us do not know yet what we sold our January coal for.

Mr. SHEARN. You mean in January, 1903?

Mr. STURGIS. Yes.

Mr. SHEARN. When you were turned loose.

Mr. STURGIS. Yes.

Mr. SHEARN. Who turned you loose?

Mr. STURGIS. The railroad companies declined to take our coal, or did not want to take it for some reason.

Mr. SHEARN. They declined to take your coal?

1009 Mr. STURGIS. Yes, virtually; they did in some cases.

Mr. SHEARN. At the time when the people down here were clamoring for coal?

Mr. STURGIS. For this reason——

Mr. SHEARN. They did, did they?

Mr. STURGIS. Yes.

Mr. SHEARN. They declined to take your coal?

Mr. STURGIS. On one contract.

Mr. SHEARN. Did they tell you how long——

Mr. KERR. Let him state the reason.

Mr. SHEARN. What was the reason they gave you?

Mr. STURGIS. Coal was selling here as high as fifteen to twenty dollars per ton. Coal was selling at these enormous prices. The railroad companies, as everybody knows I presume, was selling coal at the old circular price, plus fifty cents I believe; some of our individual

operators—of whom I was not one—some of the individual operators whose coal was settled for on the basis of, say, five dollars or four dollars and a half said that that was not the market price of coal on which their contracts would be settled; they were to be paid for at the breaker on the tide water price, so they threatened suit against the companies.
1010 The companies of course I suppose were not willing to take the risk of these suits, of a percentage on twenty dollars coal when they were only getting five dollars for their coal, so rather than meet this question and not being willing to change their price at tide water, they said first to a few and then to all of us, why sell your own coal for three months.

Mr. SHEARN. For three months?

Mr. STURGIS. That is the way we were turned loose. That is what I meant by it; I suppose they would have taken my coal if I had insisted on its going that way; but I was very glad when the 1st of April came around and I could get back and I think the rest were.

Mr. SHEARN. How did you sell your coal during those three months you were turned loose?

Mr. STURGIS. We put it in the hands of sales agents in New York.

Mr. SHEARN. In whose hands did you put your coal?

Mr. STURGIS. Three or four different parties.

Mr. SHEARN. Who are they?

Mr. STURGIS. Mr. Meeker who sits here, Messrs. Stickney &
1011 Cunningham, Williams & Peters, and one or two parties in Philadelphia.

Mr. SHEARN. And they sold the coal for you on commission?

Mr. STURGIS. Yes, sir.

Mr. SHEARN. They charged you how much commission?

Mr. STURGIS. There was a difference in the commission. I think the commission was, as a rule, except in one case, five per cent.

Mr. SHEARN. Five per cent?

Mr. STURGIS. That is, if coal sold for $8.00, as it did for two or three days here, they got 40 cents.

Mr. SHEARN. They got 40 cents a ton?

Mr. STURGIS. Yes.

Mr. SHEARN. Williams & Peters?

Mr. STURGIS. No, no; I am giving no names.

Mr. SHEARN. These different agents you have named?

Mr. STURGIS. I am simply giving them as an example.

Mr. SHEARN. They received 40 cents a ton for selling this coal?

Mr. STURGIS. Most of the parties to whom we shipped coal received five per cent. You can figure that out. Before the month of
1012 January—before February was out, at least, that same coal was selling at half that or less, I understand.

Mr. SHEARN. Did you go through the form of any such transaction as selling the coal to the railroad and their selling it back to you?

Mr. STURGIS. Yes, sir; I think we did, one or two cases.

Mr. SHEARN. Yes. And at what figure did you sell your coal to the railroad company?

Mr. STURGIS. That arrangement was in writing; I never could understand it myself. I do not understand it to-day.

Mr. SHEARN. Well, you sold your coal to the railroad company during this time at a price at the breaker, and then they sold it back to you at a price down here?

Mr. STURGIS. There was a written contract which I would like to have you see, but I have not the contract here.

Mr. SHEARN. Are you willing to produce those contracts?

Mr. STURGIS. If the other parties have no objection I am perfectly willing.

1013 Mr. SHEARN. This contract with the Hillside Coal & Iron Company, is it?

Mr. STURGIS. No.

Mr. SHEARN. Or with Stickney & Cunningham? With whom is the contract?

Mr. STURGIS. I decline to state.

Mr. SHEARN. You decline to state, on what grounds?

Mr. STURGIS. In the first place, because I do not know who is behind one of them. I would have to get the contract. That is one reason. Well, I will state that, that the principal one was with the Philadelphia & Reading Coal & Iron Company, and if they have no objections, I will——

Mr. SHEARN. You have no objection, I suppose, Judge Campbell?

Mr. CAMPBELL. I do object; but, in the first instance, I do not know anything about this paper, and I would like to look at it if I get a chance——

The CHAIRMAN. You may want to put it in evidence?

Mr. CAMPBELL. It is possible I may want to put it in evidence. I have no doubt, on the whole, your honor, that any contract we make with this gentleman, or anyone else, we would be glad to exhibit.

1014 Mr. SHEARN. You have shown that disposition thus far.

Mr. SHEARN. Now, then, for some reason that was not known to you and that you do not quite understand, you sold your coal under a written contract during these three months you were turned loose, or some part of it, to the Philadelphia & Reading Coal & Iron Company at the breaker, and then they sold it back to you at tide water, and then you turned it over to a sales agent down here, who sold it anywhere from twelve to twenty dollars a ton on a five per cent commission.

Mr. STURGIS. No, sir; I never sold an ounce of coal, I think, at over eight dollars. We did sell for two or three days at eight dollars, and then it commenced to slide down very rapidly.

Mr. SHEARN. Well, you sold for all you could get?

Mr. STURGIS. Yes, the sales agent did. We were glad to get it, because we needed it very badly.

Mr. SHEARN. Well, we needed coal and also our money.

Mr. STURGIS. Why, I was glad to get it. In one of these collieries, the Pine Hill, we have invested over four hundred thousand dollars, which we have been putting in there for at least five years. We never had but one month in that whole time up to the time of this

1015 strike when we paid operating expenses, and we did make a little money in January, I hope, when we get our accounts settled up. That is the reason I was glad to get it.

Mr. SHEARN. They have not been settled up yet?

Mr. STURGIS. Some of our coal, I do not know what we got yet; if one of the companies had bought our coal we would have had our money promptly on the 20th day of the following month—that is, the 20th of February.

Mr. SHEARN. Then you proposed to the Philadelphia & Reading Coal & Iron Company that you were going to sell this coal on commission here in New York, and they understood that when they made this contract with you, I assume?

Mr. STURGIS. Well, they told us, as I say, used the expression that the other colliers were loose and they wanted me to do like the others.

Mr. SHEARN. They wanted you to go through the form of selling the coal to them and they selling it back to you?

Mr. STURGIS. No; you will have to see the contract. As I say, I do not understand; if I tried to tell you what it was I would make
1016 a mistake; I don't want to try.

Mr. SHEARN. There were a good many people that had those contracts, I suppose?

Mr. STURGES. I do not know, sir.

Mr. SHEARN. You are willing to produce it yourself, if the Reading Coal & Iron Company does not object?

Mr. STURGES. Yes, sir; I am.

Mr. KERR. Will you let me interrupt you right there, please. Didn't you understand that the method that was adopted by these various companies you have spoken taking coal and accounting for it at the breaker at the price received by the coal company in New York, five dollars, and then selling it back to the shipper, the original shipper, that that method was adopted for the reason that all the coal that was affected was under contract to the different companies and that they did not want to have anything happen which might be construed afterwards as an abrogation of the contract?

Mr. STURGES. I understood that was the object.

Mr. KERR. Yes.

Mr. STURGES. Yes, sir, I did; I understood that was the object of it.

1017 Mr. SHEARN. So then if it was stated by anyone as an explanation for the high price of coal here during January and February that these purchase contracts had been abrogated, that was not true, was it?

Mr. STURGIS. That was not true. The result was exactly the opposite. You could not dump in three or four times the free coal into New York City that had been in before without cutting the price——

Mr. SHEARN. Now, then, won't you tell the Commission how much freight was paid to the companies for transporting this coal sold down here for eight dollars per ton?

Mr. STURGIS. The freight was settled by the freight agents entirely; they deducted their commissions and the freights and reported to us the net.

Mr. SHEARN. What was the net per ton when coal was eight dollars a ton?

Mr. STURGIS. Oh, well, for instance in the month of January, from one concern which I did get a full settlement, there are I suppose fifty

or sixty different items, different prices, different sizes. The price went down so rapidly that I could not begin to give it to you. I have been dizzy ever since.

1018 Mr. SHEARN. But when coal was eight dollars a ton, prepared sizes, what were you getting net from these agents down town?

Mr. STURGIS. About six dollars.

Mr. SHEARN. About six dollars?

Mr. STURGIS. Yes; that is what I should get or could I presume, but, as I say, we have not been able to make up our books for January yet.

Mr. SHEARN. Then the freight matter was a private arrangement between them and the railway company?

Mr. STURGIS. Well, they deducted the freight rate from it and their commission and sent us the balance.

Com'r CLEMENTS. You said something a moment ago about being turned loose?

Mr. STURGIS. Yes.

Com'r CLEMENTS. What did you mean by that? What does that remark apply to?

Mr. STURGIS. The companies' coal was sent down here and sold at a uniform rate which we understood, $5.00 or $5.25 a ton.

Com'r CLEMENTS. That was the circular rate?

Mr. STURGIS. Well, it was sold at that. No matter what the demand was the coal was sold in New York at five dollars a ton. The'

1019 refused to raise the price. The independent operators said "that is not the prevailing rate, for the little coal that is free is selling at $20; we want our share of that." Then they were turned loose.

Com'r CLEMENTS. The independents?

Mr. STURGIS. The independents; they all commenced to ship in to a comparatively few dealers in New York City, and those dealers who with the small quantity of coal had been able to get eighteen or twenty dollars a ton, with this immense amount of coal did not get half of that; prices went tumbling down; so while one colliery with which I am concerned got $5.60 at the breaker for a little pea coal in the month of January, the report to me the other day, which I hope is not correct, gives me $1.62 for pea coal for January, so you can see how quick it went down.

Com'r CLEMENTS. According to that it was not a bad thing for it to go down?

Mr. STURGIS. No, it was not a bad thing.

Mr. SHEARN. What was done to keep it from going down by this operation?

Mr. STURGIS. By the operation?

Mr. SHEARN. Yes.

1020 Mr. STURGIS. Why, everything was done to press it down. We were all trying to get these prices; we all had to ship in the same pile, dump in the same pile, and a gentleman here who had been able to get cut prices for 100,000 tons in a month, when he had 500,000 he could not do it; the people were all going to a big company who sold them their coal at $5.00 a ton. The only question was that there was not enough of the five-dollar coal to go around. Mr. Baer once, I think very unjustly, stated that the independent operators were

keeping the price up. We knocked it down, which was not to our credit, because we wanted to get a little high-priced coal; before we got through we were punished.

Com'r CLEMENTS. I do not know how it was here, but at Washington the dealers always said they had to pay $9.00 for it and sell it for $11 or $12.

Mr. STURGIS. Most of it came here, but I never——

Com'r CLEMENTS. That was due to the fact that the railroad companies turned them loose from the contracts?

Mr. STURGIS. For three months.

Com'r CLEMENTS. And charged whatever they could get?

Mr. STURGIS. Yes; but that didn't stay up long.

Com'r CLEMENTS. No, because they all wanted it.

1021 Com'r CLEMENTS. So the competition brought it down?

Mr. STURGIS. I have fought the railroad companies as much as anybody, but you must permit me to say that I think the conduct of the large coal companies—and it is not their record part of the last ten years—the conduct of the large companies during this winter has been wonderfully magnanimous, in my judgment. They might have made millions on millions of dollars. Instead of doing that which they had a right to do after the way they had been treated, instead of doing that, they kept the price down to five dollars a ton. It is something that is not done very often. That is my opinion, and they have treated me pretty tough sometimes.

Mr. KERR. Mr. Sturgis, if the individual operators had delivered their coal to the companies during the period you speak of when you say you were turned loose, and taken the price which the large companies had fixed, couldn't you have sold your entire output?

Mr. STURGIS. Could we have sold our entire output? I have to guess at that. I think so.

Mr. KERR. You didn't ship any more coal because of this being turned loose than you would have done otherwise?

1022 Mr. STURGIS. No, sir.

Mr. KERR. Nor any other operator, so far as you know?

Mr. STURGIS. No, sir.

Mr. KERR. So that if the coal had come down in the original contract between the operators and the company, it would have been held at the company's price, and just as much output as did come down here under the other arrangement?

Mr. STURGIS. Yes, sir; we would have made just as much money, except in January.

Mr. SHEARN. Didn't you notice that the demurrage charges were pretty heavy in these deductions that the agents made on sales?

Mr. STURGIS. We have not had any statements of demurrage yet. I have not had any yet; it is a question whether we are liable for demurrage charges.

Mr. SHEARN. You know that the coal was held up here in the vicinity of New York for weeks at a time?

Mr. STURGIS. I understood so.

Mr. SHEARN. And after it had been sold by you to these agents on commission?

Mr. STURGIS. No; not sold to them.

1023 Mr. SHEARN. Or after it had been shipped?

Mr. STURGIS. Yes.

Mr. SHEARN. Who had stopped the coal before it got to New York and sidetracked it?

Mr. STURGIS. Well, I think in the month of January they haven't facilities for shipping the enormous demand; I think the month of January, when the ice interferes with them, they have not the facilities for unloading.

Mr. SHEARN. For unloading?

Mr. STURGIS. For unloading——

Mr. SHEARN. You mean at the terminal?

Mr. STURGIS. At the terminal, after the month of January, when the price broke, I think the difficulty was in selling.

Mr. SHEARN. Who do you think is responsible for the storing of all these hundreds upon hundreds of full cars of coal in the suburbs—the railroad companies, or were you independents responsible, or your brokers?

Mr. STURGIS. There never was an independent in the world—never one—that stored a single ton of coal intentionally; the rush was to get that coal to tide water.

Mr. BROWNELL. I object to the statements of counsel not sup-

1024 ported by evidence; it is absolutely incorrect and contrary to the fact that coal was stored intentionally in order that it might not reach——

Mr. SHEARN. I can show you photographs of miles of loaded cars outside of the suburbs.

Mr. BROWNELL. Nor the statement which he makes that the railroad companies are responsible for the high price of coal. I challenge him to bring one bit of evidence that any coal company or any railroad company delayed the delivery of one car of coal during those months one hour longer than it was practicable to deliver it. One witness——

Mr. SHEARN. You won't object to it as immaterial and irrelevant?

Mr. BROWNELL. If you can bring a reputable witness I would be very glad to hear him—or a reputable witness who will testify that any railroad charged one dollar more or one cent more for the price of a ton of coal, or that one railroad company respondent here was responsible for one cent of the prices added above the circular price——

Mr. SHEARN. What explanation have you for this buy of coal and selling it back again?

1025 Mr. BROWNELL. I will state this, and Mr. Sturgis can correct me if I am wrong—he has stated that the independent operators, so called, who had sold their coal to coal companies under contracts, they claiming a certain percentage of the market price at tide water, found that when coal was scarce, the railroad companies having transported the coal of coal companies that had all the coal and was selling it, had fixed a price that the coal by their circulars——

Mr. SHEARN. They do fix their prices?

Mr. BROWNELL. It has been proven here. Of course coal companies that are selling name price. Everything that is sold is sold at a market price. Just the same as there is a market price for eggs and wheat there

was a market price for coal. I understood Mr. Sturgis to say that the coal companies that were selling refused to take advantage of the necessities of the public, or whatever you wish to call it—refused, at least, to raise their selling price above the circular price. Is that correct?

Mr. STURGIS. That is my understanding.

Mr. BROWNELL. That the independent operators who had sold their coal for a certain percentage of the market price felt they had
1026 the legal right to have that coal sold—to have that coal sold for the market price, which ran perhaps to eight or ten dollars, or what other number of dollars it might be; that they threatened the coal companies that had purchased, and gave them notice that if they persisted in selling to the public—whatever they might do with their own production—if they continued to sell the coal bought under these contracts at five dollars, that the selling independent companies would sue them—would hold them responsible for that percentage based upon what they claim was the full market price—and that the coal companies were faced with this dilemma. They declined, and refused to sell a pound of coal for one cent more a ton than the price that they had named, although there was a market demand for it at a higher price. Is that right?

Mr. STURGIS. With one correction. So far as I know, there was only two out of the large number of individual operators that took this position. There were some—of course, if they let up on one they had to set us all loose.

Mr. BROWNELL. That was the claim?

Mr. STURGIS. Yes.

1027 Mr. BROWNELL. They had to choose between two alternatives, either of charging a higher price for all the coal they had bought and subject themselves to a suit—counsel for the various companies, and counsel who examined the matter carefully, concluded there was a legal right on the part of the respondent companies to have a percentage of the market price. The other alternative was to let the coal-selling operators take the responsibility, and suspend the operations of those provisions of the contract in the meantime. Is that correct?

Mr. STURGIS. That is as I understand it.

Mr. BROWNELL. And that was done, some coals sold by the purchasing independent operators at a higher price, but so far as I know—and I should like to ask Mr. Sturgis if that is not in accordance with his understand—the coal companies, called the railroad coal companies by counsel, did not sell either the coal they mined themselves or the coal that they purchased at higher prices than their five-dollar circular price, or the price that had been quoted, notwithstanding that the market price was much higher. Is that correct?

Mr. STURGIS. I have stated that already.

1028 Mr. BROWNELL. I merely wanted the information in answer to the counsel, who seemed to think that there was some great conspiracy on the part of the companies.

The CHAIRMAN. The situation seems entirely obvious.

Mr. BROWNELL. It has been charged and intimated by counsel that there was something underhand, that these companies had done a great wrong. We are not asking for any credit for what was done. It probably was good business policy. It, perhaps, might be characterized in

other ways to their credit, but it certainly is not a transaction that should be characterized or intimated to have been something that was a conspiracy against the public, or an attempt in some manner to take advantage of the public.

Mr. SHEARN. The gentleman misapprehends the point entirely, it seems to me. He admits that the independents were right in this contention because the market price of coal was higher than $5 a ton. Now, what I am endeavoring to show here, among other things, is that the price of coal is maintained at an artificial rate by these companies by agreement, and that if they keep the price of coal under the market price by agreement it shows a combination just as much as though they kept it above. That is what I am interested in. If the market

1029 price of coal, as he concedes, was so much more than five dollars a ton and these companies were one and all holding it at an artificial price of five dollars a ton, it is very satisfactory evidence as to whether there is any understanding or agreement between them.

1030 Mr. BROWNELL. I stated several times here that we were called on to meet certain issues and that others were dragged in. I admit it is true that before the attorney-general of the State of New York we were charged with conspiracy under the anti-trust law, in conspiring. The facts will show, if anything, a conspiracy to keep the selling price of coal lower than it would have otherwise been during the extraordinary condition and emergency that existed for a short time during the last year. If that is conspiracy counsel is welcome to make the most of it, and we are willing to meet him before the State or United States tribunals at any time. But I ask him not to give the intimation that we were conspiring to keep the price down and at the same time reaching out and pocketing the higher price. There is no suggestion of any combination on that. If there was any combination that made that higher price, we will welcome an inquiry any time before the proper tribunals. I believe as a matter of fact with some companies their prices varied.

Mr. SHEARN. Will you name them?

Mr. BROWNELL. I do not know the names of the different com-

1031 panies. I am not as familiar with it as counsel. If it was as close a combination as you say, I suppose I would know.

Com'r CLEMENTS. Were these contracts in writing?

Mr. BROWNELL. I do not know. I was not in the city at the time.

Com'r CLEMENTS. Do you know, Mr. Sturges?

Mr. STURGES. Yes, sir; it was an agreement for three months. I was not subpœnaed to bring it, and have not brought it.

Mr. SHEARN. All it amounted to is that the companies rather than face a lawsuit are willing that the public shall pay eight, ten, twelve, or fourteen dollars a ton for coal.

The CHAIRMAN. I certainly do not draw any such inference from Mr. Sturges' testimony. From what he testified, this appears to be the situation: These coal companies have made contracts to buy this coal and pay 65 per cent of the market price at tidewater.

Mr. SHEARN. That is what we imagine.

The CHAIRMAN. That is what you have assumed.

Mr. SHEARN. Yes, sir.

1032 The CHAIRMAN. They could not very well sell that coal at $5.00 and run the risk of being sued, on the theory that the market price was $15, could they?

Com'r CLEMENTS. That would depend somewhat on the reading of the contract.

The CHAIRMAN. It might.

Mr. SHEARN. The contract I read you yesterday provided for that—referred it to arbitration. We know what they did. It has been brought out to-day. They went through the form of purchasing the coal and selling it back at tide water and conniving at——

Mr. CARR. There is nothing to show connivance except your statement.

Mr. SHEARN. They had contracts in existence which were valid and binding, according to your point of view, and being threatened with a lawsuit they suspended them for three months. Now, the point of interest in this case is this: That, as the market price of coal was more than $5 a ton, whether these companies were all selling their coal at a different price than the market price, or selling at the same price, would be strong evidence as to whether that is done accidentally or by agreement, concert, and combination.

1033 The CHAIRMAN. If they maintained a price of $5 when the market price was ten, they could maintain a price of $5 when the market price was $3.50 or $4.00?

Mr. KERR. You mean by the market price the price of the retail dealers?

Mr. SHEARN. I mean the market price at tide water, and it was a good deal more than $5 a ton. You said you advised them that they were legally liable to pay for more than 65 per cent of $5.

Mr. KERR. Who got the high prices?

Mr. SHEARN. The independent operators got part and the sales agents got the rest. The only thing now to find out is how much the railroad company got out of it. We have not got that far yet.

Mr. CAMPBELL. What was the rate at that time? Do you know?

Mr. SHEARN. According to the tariffs?

Mr. CAMPBELL. Yes, sir.

Mr. SHEARN. To Perth Amboy, $1.55; to Jersey City, $1.75, and to South Amboy, $1.40.

The CHAIRMAN. One moment, gentlemen.

1034 Mr. SHEARN. I am through with this witness, except that I was about to ask the chairman to instruct the witness to send this contract to Mr. Decker, the assistant secretary, after he gets permission from Mr. Baer, or whoever he has to apply to——

Mr. STURGES. I do not apply to anybody.

Mr. CARR. That is an improper statement. It is an insult to the Commission and an insult to the witness.

Mr. SHEARN. You said you had to confer with somebody of the Philadelphia & Reading?

Mr. STURGES. I did not say any such thing. I said where there are two parties to these contracts, I have no right to produce them without the consent of the other party.

Mr. SHEARN. The other party is the Philadelphia & Reading Coal & Iron Company?

Mr. STURGES. Yes, sir.

Mr. SHEARN. Well, there is no insult in mentioning Mr. Baer's name.

The CHAIRMAN. Are you referring to the purchase contracts?

1035 Mr. SHEARN. No, sir; I am talking about the written contract between him and the Philadelphia & Reading Coal & Iron Company and such other contracts as were entered into for the suspension for three months of these agreements. When I suggested at the hearing before the Attorney-General that these contracts had been abrogated, they rose and denied it on every hand. Now, if the Philadelphia & Reading Coal & Iron Company is willing to have this gentleman produce that contract, I ask the chairman to request him to send it to Mr. Decker, the assistant secretary.

The CHAIRMAN. I understood the witness to say that he was interrogated in reference to this contract for the suspension of the arrangement; that he was willing to produce it here if the coal company had no objection.

Mr. STURGES. I am ready to produce them all here. I have no objection.

Mr. CAMPBELL. I give notice now that we shall not assent until the other question has been determined that your honors will refer to the courts. If the contract is admissible, we will produce our duplicate.

1036 The CHAIRMAN. Perhaps you will be willing to say, in case the court holds against you on this general proposition and requires the production of these contracts, that you would voluntarily produce this supplementary one?

Mr. CAMPBELL. Yes, sir.

Mr. STURGES. Excuse me a moment. I want to say that I do not take anybody's permission or consent, only on the general principle that where there are two parties to this contract, if the other party do not choose to produce the contract on their part, I do not think I ought to do it.

Mr. KERR. You stated that at the time of the organization of the Delaware Valley & Kingston Road the independent operators pledged their coal for transportation over that road?

Mr. STURGES. Many of them did it as individuals; most of them, I think.

Mr. KERR. Not as an organization?

Mr. STURGES. Not as an organization.

Mr. KERR. Was not that pledge in the shape of a conditional
1037 agreement for the sale of their coal to the Pennsylvania Coal Company at the mines.

Mr. STURGES. It was with the companies I represented, and, so far as I know, with the others.

Mr. KERR. You understand that is the same—in the same form?

Mr. STURGES. Yes, sir.

Mr. KERR. That is all.

The CHAIRMAN. If there are no further questions to be asked this witness, the witness will be excused.

The witness was excused.

1038 H. M. HOWE, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Will you give your full name, Dr. Howe?

Mr. HOWE. H. M. Howe.

Mr. SHEARN. Where do you reside?

Mr. HOWE. In Philadelphia.

Mr. SHEARN. What do you know about the formation of a committee at the end of 1900, or early in 1901, representing the independent coal operators throughout the various fields, for the purpose of negotiating a new contract with the railroads?

Mr. HOWE. It was this: Immediately following the award of ten per cent advance in wages, which it was said at the time was ordered by Mr. Morgan, there was a good deal of agitation among individual operators, because, of course, it was known at that time that there was trouble brewing. There was the strike; but all of a sudden, without any consultation with individual operators, the award of ten per cent was given.

1039 The individual operators, following that, met here in New York, not by any formal call. It was not in any sense a meeting of the individual operators' association, but it was a meeting that came about as the natural result of business conditions which brought them to this place, and at that meeting myself and Mr. Connell and Mr. Kemmerer were appointed, and we met the several other gentlemen, and the result was a modification of the contract. It was considered that the individual operators—that there interest was very large in this matter, and they had no voice in considering whether there should be an advance in wages, and it was thought that they should have an advance on their coal, resulting from the higher price it would cost them to produce it.

Mr. SHEARN. Where were these conferences held between your committee and the gentlemen named?

Mr. HOWE. At different places.

Mr. SHEARN. Do you know Mr. McAnulty?

Mr. HOWE. I met him.

Mr. SHEARN. You saw him at some of the conferences?

Mr. HOWE. Yes, sir; but he was not a member of the committee.

1040 He was there with Mr. Connell, who was not a well man, and he brought Mr. McAnulty, who, I understand, was his son-in-law.

Mr. SHEARN. Who else was present at these conferences besides yourself, Mr. Kemmerer, and Mr. Connell, or Mr. McAnulty?

Mr. HOWE. Mr. John B. Garrett was there.

Mr. SHEARN. What road is he connected with?

Mr. HOWE. The Lehigh Valley. Mr. Baer was present.

Mr. SHEARN. Mr. George F. Baer?

Mr. HOWE. Mr. Geo. F. Baer. That was prior to his presidency of the road—and sometimes Mr. Truesdale.

Mr. SHEARN. The president of the Delaware, Lackawanna & Western?

Mr. HOWE. Yes, sir; and sometimes a Mr. Cummings, who I think was interested——

Mr. SHEARN. He was vice-president of the Erie?

Mr. HOWE. Yes, sir; and also Mr. Thomas.

Mr. SHEARN. Who is chairman of the Erie board of directors?

1041 Mr. HOWE. I do not know what his position was.

Mr. SHEARN. Mr. Eben B. Thomas?

Mr. HOWE. Yes, sir.

Mr. SHEARN. You had a number of these conferences, did you not?

Mr. HOWE. We did; yes, sir.

Mr. SHEARN. And you made representations to these gentleman, stating in substance that you thought you were entitled to a greater proportion of the proceeds of the sales of your coal?

Mr. HOWE. That is right.

Mr. SHEARN. And there was a discussion pro and con in which these gentlemen participated?

Mr. HOWE. The general question of the cost of producing coal was entered into and discussed at length, and the fact that the mines are getting deeper and the veins are getting thinner and the cost is largely increased of producing coal. I know—I am a member of the firm of Pardy & Company, which was among the early operators up at Hazleton—that conditions have largely changed and it was in view of that fact and in view of the fact that authorities outside of ourselves
1042 put on an additional cost upon us that we felt we had a right to ask for some consideration.

Mr. SHEARN. And at these conferences there was a printed form of contract under discussion, was there not?

Mr. HOWE. Yes, sir. Of course, there was noted each time any points arrived at, and in the end they formed the basis of a new order of things.

Mr. SHEARN. You got a little nearer an agreement each time?

Mr. HOWE. We tried to.

Mr. SHEARN. And at the end you did come to an agreement?

Mr. HOWE. We did come; yes, sir.

Mr. SHEARN. Look at this contract marked "Exhibit No. 23," and state whether that embodies the provisions of the agreement.

Mr. HOWE. I will look at it, but I have not seen the contract for so long that it is idle for me to attempt to tell you.

Mr. SHEARN. Do you recollect the substantial provisions?

1043 Mr. HOWE. Yes, sir; an advance to 65 from 60.

Mr. SHEARN. On prepared sizes at tide water?

Mr. HOWE. Yes, sir.

Mr. SHEARN. And provided that the seller should turn over to the buyer the entire future product of his mine on that basis?

Mr. HOWE. Yes, sir.

Mr. SHEARN. And the buyer agrees that the quantity to be ordered monthly shall be a just quantity, to be measured by the colliery capacity of the respective sellers?

Mr. HOWE. As I recollect it; yes, sir.

Mr. SHEARN. Did that committee report?

Mr. HOWE. Only informally.

Mr. SHEARN. You communicated the result of the agreement to the different individual operators?

Mr. HOWE. We did.

Mr. SHEARN. And thereafter did Pardy & Company enter into one of these contracts?

Mr. HOWE. They did.
Mr. SHEARN. Where are their mines?
Mr. HOWE. At Hazleton.
Mr. SHEARN. What is their output?
1044 Mr. HOWE. Well, our capacity is a thousand tons a day.
Mr. SHEARN. Is that your actual capacity, or rated capacity?
Mr. HOWE. That is the actual.
Mr. SHEARN. What is the rated capacity?
Mr. HOWE. I do not know.
Mr. SHEARN. It is under that, is it not?
Mr. HOWE. No—I do not know what our rated capacity is. We often get out more than that.
Mr. SHEARN. With what company is your contract?
Mr. HOWE. The Lehigh Valley Coal Company.
Mr. SHEARN. What railroads reach your mine beside the Lehigh Valley?
Mr. HOWE. The Lehigh Valley only.
Mr. SHEARN. Are you connected with any other coal company?
Mr. HOWE. No, sir.
Mr. SHEARN. That is all.
Mr. GOWEN. That is all, Doctor.
The CHAIRMAN. If there are no further ques——

1045 NEW YORK CITY, N. Y., *April 29, 1903—10.30 o'clock a. m.*

The CHAIRMAN. Mr. Shearn, are you ready to proceed?
Mr. SHEARN. Yes, sir. I should like to inquire first whether the secretary of the Commission has received from Mr. Jermyn the contract which he was to mail?
Mr. DECKER. It had not come to me up to 4 o'clock yesterday.
Mr. SHEARN. Mr. Peters.
(No response.)
Mr. SHEARN. Mr. John Edmonds.

JOHN EDMONDS, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Edmonds, what is your business?
Mr. EDMONDS. Sales agent of the Reading Coal & Iron Company.
Mr. SHEARN. Where?
Mr. EDMONDS. At 143 Liberty street, New York.
Mr. SHEARN. How long have you been there?
Mr. EDMONDS. About ten years.
1046 Mr. SHEARN. About what has been the average sales of Reading coal under your supervision at tide-water points the last two or three years?
Mr. EDMONDS. It varies different years—about eight hundred thousand to a million tons.
Mr. SHEARN. That is a fair average?
Mr. EDMONDS. Excepting last year.
Mr. SHEARN. Except during unusual conditions—such as strike conditions?
Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Are you employed on salary, or are you an independent seller of coal on commission?

Mr. EDMONDS. I am employed on salary.

Mr. SHEARN. Employed by the Reading Coal & Iron Company?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. To supervise the sale of their coal here at tide water?

Mr. EDMONDS. I am.

Mr. SHEARN. Do you know what it costs a ton to sell coal at tide water?

Mr. EDMONDS. I do not.

1047 Mr. SHEARN. Well, haven't you ever made any estimate or examination into figures that would enable you to testify on that point during all these years you have been selling that coal?

Mr. EDMONDS. I have not.

Mr. SHEARN. How large a force do you have under you?

Mr. EDMONDS. Half a dozen clerks.

Mr. SHEARN. Your office is in the building of the Central Railroad of New Jersey—that is, 143 Liberty street?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you know what the annual expenses of your office are?

Mr. EDMONDS. I do not.

Mr. SHEARN. Do you pay your clerks yourself?

Mr. EDMONDS. I distribute the money; yes, sir.

Mr. SHEARN. Don't you know how much money comes to the office a year for expenses?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. How much?

Mr. EDMONDS. For clerk hire only, about $1,000 a month.

Mr. SHEARN. And for other expenses, such as rent, stationery, and various other items?

1048 Mr. EDMONDS. I have nothing to do with either of those items.

Mr. SHEARN. Don't you O. K. the bills?

Mr. EDMONDS. No, sir.

Mr. SHEARN. Who does?

Mr. EDMONDS. Our secretary, I presume.

Mr. SHEARN. Don't the bills come under your observation for all the expenses of this office?

Mr. EDMONDS. No, sir.

Mr. SHEARN. When you sell coal, do the proceeds of the sales come to you in the first instance?

Mr. EDMONDS. Infrequently; yes, sir.

Mr. SHEARN. Infrequently?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. To whom do you remit the proceeds?

Mr. EDMONDS. To the treasurer of the Finance Company of Pennsylvania.

Mr. SHEARN. Of the Finance Company of Pennsylvania?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. What is the Finance Company of Pennsylvania?

Mr. EDMONDS. It is an institution in Philadelphia—a banking institution, I presume.

1049 Mr. SHEARN. What do you do—endorse over the checks to that institution or deposit them in a bank account of your own and then make checks on your account payable to the Finance Company of Philadelphia?

Mr. EDMONDS. I generally deposit them in the bank to the credit of the Finance Company of Pennsylvania.

Mr. SHEARN. What bank does that company keep an account with?

Mr. EDMONDS. The Liberty National.

Mr. SHEARN. In cases where the proceeds of the sales of coal do not come to you direct, to whom do you instruct the purchasers to send remittances?

Mr. EDMONDS. Our invoice instructs them to remit to the Finance Company of Pennsylvania.

Mr. SHEARN. At what place?

Mr. EDMONDS. Fourth and Chestnut streets, Philadelphia.

Mr. SHEARN. That is the address given on your invoice?

Mr. EDMONDS. 431, I think it is.

Mr. SHEARN. I say, that address is on the invoices?

Mr. EDMONDS. Yes, sir.

1050 Mr. SHEARN. And those instructions are on the invoice?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you make any deductions from the amounts you receive before you turn the proceeds over to this company for office purposes or any kindred purposes?

Mr. EDMONDS. I do not.

Mr. SHEARN. You just turn over the same amounts you receive to the Finance Company of Pennsylvania?

Mr. EDMONDS. The check being drawn to my order, I simply endorsed it.

Mr. SHEARN. If it is drawn to your order, or to the Reading Coal & Iron Company's order, you would endorse it the same way?

Mr. EDMONDS. I probably would, but it is never drawn that way.

Mr. SHEARN. Do you know what the average commission is that is paid for selling anthracite coal at tide water?

Mr. EDMONDS. I do not.

Mr. SHEARN. From your knowledge of the business, are you
1051 able to estimate what is a fair commission, a fair price per ton, for the sale of anthracite coal at tide water?

Mr. EDMONDS. I think not.

Mr. SHEARN. You mean you are unable to or unwilling to?

Mr. EDMONDS. I am unable to.

Mr. SHEARN. Do you know what the cost of loading coal from the cars into barges is at tide-water points?

Mr. EDMONDS. I do not; no, sir.

Mr. SHEARN. Do you know who bears that expense?

Mr. EDMONDS. I do not; no, sir.

Mr. SHEARN. In making out your invoices or bills to purchasers of coal, is that expense added?

Mr. EDMONDS. It is not; no, sir.

Mr. SHEARN. So far as you know, then, it is borne by the railroad company?

Mr. EDMONDS. I presume so.

Mr. SHEARN. Do you know what the amount of wastage is in unloading from the cars to the barges at tide water?

Mr. EDMONDS. We allow from one to one and a half per cent at our docks.

Mr. SHEARN. To whom do you allow that?

1052 Mr. EDMONDS. We deduct it from the weight, as ascertained at the piers; that, is, according to the condition of the coal.

Mr. SHEARN. That is to say, if you have a manifest calling for so many thousand pounds or so many hundred tons of coal, with a given weight, and you sell that same amount instead of billing to the purchasers at precisely the same weight, you make an allowance to them of one to one and a half per cent?

Mr. EDMONDS. In the weight; yes, sir.

Mr. SHEARN. Who makes that allowance—the Reading Coal & Iron Company?

Mr. EDMONDS. It comes off our weights.

Mr. CAMPBELL. Comes off our what?

Mr. EDMONDS. Off the weights at the pier.

Mr. SHEARN. The coal is weighed at the piers before it goes into the barges?

Mr. EDMONDS. Yes, sir.

Mr. CAMPBELL. Are you sure about that?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. You are sure about all these matters you are testifying about, are you not?

Mr. EDMONDS. Yes, sir.

1053 Mr. SHEARN. Tell the court, please, at what point and under what conditions this weighing is done at tide water.

Mr. EDMOMDS. It is not done under my supervision.

Mr. SHEARN. But you have seen it done?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. How is it done?

Mr. EDMONDS. The cars are run up on the piers and weighed at the top of the piers and a number of cars are billed out for a particular barge or vessel, and each block of cars is weighed and those weights as ascertained are totaled up, and from that a deduction of one or one and one-half per cent is made, according to the condition of the coal at the time the shipment is made.

Com'r PROUTY. I think there was some testimony that in some cases the coal was unloaded from the cars into storage. Is that so as to your company?

Mr. EDMONDS. We have no storage place over there at Port Reading.

Mr. SHEARN. How about Port Liberty?

Mr. EDMONDS. We do not make shipments at Port Liberty.

1054 Mr. SHEARN. Does not some of your coal come there from Bound Brook over the Central Railroad of New Jersey?

Mr. EDMONDS. None of our coal does.

Mr. SHEARN. Where does it come?

Mr. EDMONDS. To Port Reading.

Mr. SHEARN. Have not you pockets there or places for the storage of coal?

Mr. EDMONDS. There is a little pocket at the end of the pier that holds about five tons for the use of the tugs.

Mr. SHEARN. Do you know anything about demurrage charges at Port Reading, where coal that comes there is the coal of independents and not coal of the coal & iron company?

Mr. EDMONDS. I do not.

Mr. SHEARN. You do not know anything about that?

Mr. EDMONDS. No, sir.

Mr. SHEARN. And so far as you know there are no drawbacks or deductions for storage because you have no place to store?

Mr. EDMONDS. I know nothing about that.

Mr. SHEARN. Then the only deductions that have to come out of the price realized for coal, so far as you know, are the cost of selling
1055 and the waste, and the cost of unloading?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you know how much those three elements amount to per ton on prepared sizes, together?

Mr. EDMONDS. I never figured them; I do not.

Mr. SHEARN. Who fixes the prices at which you sell coal?

Mr. EDMONDS. Our general coal agent.

Mr. SHEARN. Who is he?

Mr. EDMONDS. Mr. Thomas M. Richards.

Mr. SHEARN. Where is his office?

Mr. EDMONDS. In Philadelphia.

Mr. SHEARN. The instructions you receive from him—are they written or oral?

Mr. EDMONDS. Both ways.

Mr. SHEARN. How often do you get instructions from him as to what you shall charge for coal?

Mr. EDMONDS. At irregular intervals.

Mr. SHEARN. Well, how frequently have you received such instructions in the last two or three years—once a month?

1056 Mr. EDMONDS. Once we did not get any for six months. We did not have any coal to sell—sometimes once a month, sometimes once a day.

Mr. SHEARN. Well, during times that are not abnormal, such as prevailed during the strike, how often were you in the habit of receiving instructions from Mr. Richards as to what you should charge for the Reading Coal & Iron Company coal?

Mr. EDMONDS. Generally, once a month; sometimes more frequently.

Mr. SHEARN. At what time of the month did these instructions come?

Mr. EDMONDS. The latter part of the month, or the early part of the month—the early part of the following month, generally.

Mr. SHEARN. Did not you generally get them during the latter part of the month?

Mr. EDMONDS. I sometimes received them the early part of the next month.

Mr. SHEARN. Have you not generally received them the latter part of the month?

Mr. EDMONDS. Generally; yes, sir.

1057 Mr. SHEARN. The instructions you have received generally at the end of the month, have they usually been written?

Mr. EDMONDS. No, sir.

Mr. SHEARN. The instructions given you cover the prices to be charged for the ensuing month?

Mr. EDMONDS. Generally so; yes, sir.

Mr. SHEARN. And if not for the ensuing month, until further instructions were given?

Mr. EDMONDS. That is right.

Mr. SHEARN. Then you have nothing to say yourself as to what price shall be charged for this coal?

Mr. EDMONDS. No, sir.

Mr. SHEARN. It does not result from your observation of market conditions here, but from orders you receive from Mr. Richards—that is correct?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you have anything to do with getting out the Reading Coal & Iron Company price circulars?

Mr. EDMONDS. No, sir.

1058 Mr. SHEARN. Those circulars since April, 1901, cutting out the period of the strike, have been issued on the first of the month, have they not?

Mr. EDMONDS. Generally so; yes, sir.

Mr. SHEARN. That is, take the circular for April 1st, 1901. You recollect that that was called Circular No. 1, don't you; and then on May 1st, 1901, Circular No. 2 came out, and in June Circular No. 3, and so on; that is correct, is it not?

Mr. EDMONDS. To the best of my recollection; yes, sir.

Mr. SHEARN. Those circulars quoted the prices for Philadelphia points and for New York points?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. In two separate columns, or series of columns?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Is it not and has it not been the custom of the Reading Coal & Iron Company to allow a discount of fifteen cents a ton off from their circular price to all their general customers in New York?

Mr. EDMONDS. It is not the custom to-day.

1059 Mr. SHEARN. But has it not been? In other words, when your circulars quote a price for New York at $4.65, does not that mean to your regular trade four dollars and a half?

Mr. EDMONDS. In many instances it did.

Mr. SHEARN. Well, in nearly every instance, did it not?

Mr. EDMONDS. Largely so; yes, sir.

Mr. SHEARN. Do you know why the price was quoted at fifteen cents more than you were really charging?

Mr. EDMONDS. No; I do not.

Mr. SHEARN. Did you have anything to do with mailing these price circulars to the trade?

Mr. EDMONDS. I mailed some of them; yes, sir.

Mr. SHEARN. On what day of the month were you in the habit of putting them in the mails?

Mr. EDMONDS. The day after I received them from Philadelphia.

Mr. SHEARN. You received a batch of them from Philadelphia, and then put them right into the mails?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. To whom did you mail the circulars—to your trade generally?

Mr. EDMONDS. The trade generally.

1060 Mr. SHEARN. That is, people who were customarily dealing with you?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Did you mail any to other sales agents?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. To whom were you in the habit of mailing them among the sales agents?

Mr. EDMONDS. As a matter of courtesy, I guess we mailed them to each one.

Mr. SHEARN. All the other companies?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. By the way, what companies maintained selling agencies for anthracite coal in New York?

Mr. EDMONDS. The Lehigh and Wilkesbarre Coal Company.

Mr. SHEARN. The agent is Mr. Heilner?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. His office is at 143 Liberty street?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. In the same building with you?

Mr. EDMONDS. Yes, sir; and the Erie Railroad——

Mr. SHEARN. By the way, what floor are you on at 143 Liberty street?

1061 Mr. EDMONDS. Seventh floor.

Mr. SHEARN. What floor is Mr. Heilner on?

Mr. EDMONDS. The seventh floor.

Mr. SHEARN. Do your offices join each other?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do they open into each other?

Mr. EDMONDS. There is a door between all the rooms.

Mr. SHEARN. Well, what other selling agencies besides yours and Mr. Heilner's?

Mr. EDMONDS. The Lehigh Valley.

Mr. SHEARN. Mr. Skeele is the sellling agent of that company?

Mr. EDMONDS. Yes, sir; and the Erie.

Mr. SHEARN. Who sells theirs?

Mr. EDMONDS. Williams & Peters—and the D. L. & W.

Mr. SHEARN. They sell their own?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you know who their agent is now?

Mr. EDMONDS. Mr. Abbott, I think.

Mr. SHEARN. Who sells the D. & H.?

Mr. EDMONDS. Ward & Oliphant.

Mr. SHEARN. Who sells the Ontario & Western?

1062 Mr. EDMONDS. Dickson & Eddy.

Mr. SHEARN. Those are the only persons that sell here at wholesale?

Mr. EDMONDS. No, sir; Stickney, Cunningham & Co.

Mr. SHEARN. For the Pennsylvania?

Mr. EDMONDS. I believe so. Coxe Brothers have an agent here.

Mr. SHEARN. Who is he?

Mr. EDMONDS. Mr. Henry Ely.

Mr. SHEARN. Are there any others?

Mr. EDMONDS. Those are all the companies.

Mr. SHEARN. Those are the persons to whom you send circulars?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. And, as I understand it, you get this batch of circulars from Philadelphia on the last day of the month?

Mr. EDMONDS. Generally the last day of the month; sometimes before and sometimes later.

Mr. SHEARN. You get them into the mails so that they are received on the first day of the month; that is, you endeavor to?

1063 Mr. EDMONDS. It depends on when I receive them. They go immediately into the mails.

Mr. SHEARN. Has it not generally been the case that you have got them into the mails so that they are received or should be received on the 1st of the month?

Mr. EDMONDS. No, sir; it has not. I recollect when they have been later.

Mr. SHEARN. Sometimes they have been later, but never before that time?

Mr. EDMONDS. Yes, sir; they have been before that time.

Mr. SHEARN. Do you recollect an occasion when they have been before that time?

Mr. EDMONDS. Well, they have been a day or two before that time.

Mr. SHEARN. I am speaking of your general course of business. As I understand, you generally get these circulars from Philadelphia on the last day of the month and put them into the mails so that they will be received on the 1st of the month?

Mr. EDMONDS. Yes, sir.

1064 Mr. SHEARN. Do you mail with those circulars an additional circular providing for discounts?

Mr. EDMONDS. Not always.

Mr. SHEARN. Have you not generally, since April, 1901?

Mr. EDMONDS. No, sir; sometimes it is stated on the circular itself.

Mr. SHEARN. Well, you have since April, 1901, generally either mailed with this price circular or had attached to it or incorporated into it a statement of discounts from the price-circular price, have you not?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. In April, 1901, the discount was fifty cents a ton, was it not?

Mr. EDMONDS. As I recollect; yes, sir.

Mr. SHEARN. And in May how much?

Mr. EDMONDS. Forty cents, as I recollect it.

Mr. SHEARN. And in June?

Mr. EDMONDS. Thirty cents.

Mr. SHEARN. And July?
Mr. EDMONDS. Twenty cents.
Mr. SHEARN. And August?
Mr. EDMONDS. Ten cents.
Mr. SHEARN. And September?
1065 Mr. EDMONDS. The circular price.
Mr. SHEARN. If the circular price was $4.50, it would be $4.50?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. And then the $4.50 price, or the lowest price reached, is supposed to be the price for how long?
Mr. EDMONDS. It happened to have been the price the remaining six months, or the six months following.
Mr. SHEARN. Until you get around to April again, when you start with a new list of circulars, do you not?
Mr. EDMONDS. We did not in 1902.
Mr. SHEARN. Do you recollect the price on prepared sizes in 1901—April?
Mr. EDMONDS. You stated that it was $4.65. To the best of my recollection that is correct.
Mr. SHEARN. That means fifteen cents off, that means $4.50?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. Do you recollect the price April 1st, 1902?
Mr. EDMONDS. To the best of my recollection it was the same thing.
Mr. SHEARN. What was it April 1st, 1903?
1066 Mr. EDMONDS. Five dollars.
Mr. SHEARN. Is there any discount from that $5?
Mr. EDMONDS. Fifty cents a ton.
Mr. SHEARN. Then the actual price was $4.50 the first of April?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. And the first of May it would be how much—$4.60?
Mr. EDMONDS. I do not know.
Mr. SHEARN. You have got to wait until you hear from Philadelphia?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. And so have the rest of us. In 1901 what was the fact as to this fifteen-cent discount?
Mr. EDMONDS. It was generally allowed.
Mr. SHEARN. In other words, it was allowed your customers from the circular price, which in every case was fifteen cents a ton more than the price you were actually receiving?
Mr. CAMPBELL. When you speak of customers, don't you mean dealers?
Mr. EDMONDS. Yes, sir.
1067 Mr. SHEARN. I say in 1901 and 1902 this allowance of fifteen cents a ton was made in every instance to your regular dealers from the circular price?
Mr. EDMONDS. No, sir; it was not made in every instance.
Mr. SHEARN. In nearly every instance?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. Your circulars on the 1st of April, 1901, stated your price at fifteen cents in excess of what you were actually willing to receive, and customarily did receive, from dealers with whom you traded?
Mr. EDMONDS. Yes, sir.

Com'r FIFER. When was that fifteen cents discount discontinued?

Mr. EDMONDS. We issued a circular after the strike in October last year from which there was no deduction.

Mr. SHEARN. There was no deduction from that $5?

Mr. EDMONDS. No, sir.

Mr. SHEARN. That is the first time that was done?

Mr. EDMONDS. Yes; to my recollection.

Mr. SHEARN. And the April, 1903, circular continued to make the discount—it is a flat rate?

1068 Mr. EDMONDS. Yes, sir.

Mr. SHEARN. A flat rate of $5—fifty cents off the first month and forty cents for the next——

Mr. EDMONDS. I do not know as to that.

Mr. SHEARN. During this same period you have received circulars from the other companies, have you not?

Mr. EDMONDS. I may have.

Mr. SHEARN. They have exchanged courtesies with you, have they not?

Mr. EDMONDS. Sometimes.

Mr. SHEARN. What companies have been in the habit of sending you circulars?

Mr. EDMONDS. To the best of my recollection I received but one this month.

Mr. SHEARN. From whom?

Mr. EDMONDS. Dickson & Eddy.

Mr. SHEARN. They are not as frequent as they used to be?

Mr. EDMONDS. I have no recollection how frequently the others were issued, if any.

Mr. SHEARN. Were you not in the habit of getting them from the D., L. & W.?

1069 Mr. EDMONDS. No, sir; I do not recollect ever receiving one from them.

Mr. SHEARN. You do not recollect receiving a circular from them?

Mr. EDMONDS. No, sir.

Mr. SHEARN. Don't you know that they have issued a circular every month from April 1st, 1901, down?

Mr. EDMONDS. If they did, I do not recollect seeing it.

Mr. SHEARN. You do not recollect seeing one?

Mr. EDMONDS. No, sir.

Mr. SHEARN. And you do not know whether that is a fact, from your knowledge of the coal business?

Mr. EDMONDS. Never having seen it; no, sir.

Mr. SHEARN. Did you receive any from the Central Railroad of New Jersey, that is, from the Lehigh & Wilkesbarre?

Mr. EDMONDS. No, sir.

Mr. SHEARN. Did they, to your knowledge, issue any?

Mr. EDMONDS. I have no knowledge of their having issued one.

Mr. SHEARN. What other companies have issued price circulars?

1070 Mr. EDMONDS. Well, I think last year or the year before I received some from the Lehigh Valley—possibly some from Williams & Peters.

Mr. SHEARN. Did you not get them from the Lehigh Valley from month to month?

Mr. EDMONDS. No, sir; not to the best of my recollection.

Mr. SHEARN. When did you receive these circulars—in 1901 or 1902?

Mr. EDMONDS. It may have been either.

Mr. SHEARN. Or both?

Mr. EDMONDS. Or both.

Mr. SHEARN. Did you make any comparison between the prices stated on their circulars and the prices stated on yours for the same grade of coal?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. They were the same, were they not?

Mr. EDMONDS. For equal grades of coal, yes, sir.

Mr. SHEARN. Did you observe that those circulars bore the same date as your circulars did?

Mr. EDMONDS. I did not.

Mr. SHEARN. What is your recollection as to that?

1071 Mr. EDMONDS. I have no recollection. I doubt if I ever looked at the date.

Mr. SHEARN. You knew what the prices would be without looking at the circulars, I suppose?

Mr. EDMONDS. I did not.

Mr. SHEARN. To the best of your recollection, the circular prices of the different companies for the same grade of coal at the same time have been the same since April, 1901?

Mr. EDMONDS. In such circulars as I received and as I recollected, yes, sir.

Mr. SHEARN. Do you buy any coal or handle any coal that is purchased on a sixty-five per cent basis of the price realized at tide water?

Mr. EDMONDS. I do not buy any coal.

Mr. SHEARN. Do you sell any coal bought on that basis?

Mr. EDMONDS. I do not know.

Mr. SHEARN. If the Reading Coal & Iron Company buy coal from independent producers on a basis of the tide-water price there is nothing to distinguish that coal from their own coal, as you sell it here in New York?

Mr. EDMONDS. No, sir.

1072 Mr. SHEARN. You sell so much stock as comes to tide water?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. And do not differentiate between the coal of this man and the coal of another man and the coal of the Reading Coal & Iron Company?

Mr. EDMONDS. No, sir.

Mr. SHEARN. It all goes into a common account?

Mr. EDMONDS. It is all Reading Coal & Iron Company coal, so far as I am concerned.

Mr. SHEARN. Do you know anything about what you have to pay for freight on the Reading Coal & Iron Company coal to Port Reading?

Mr. EDMONDS. I do not.

Mr. SHEARN. You never inquired into that?

Mr. EDMONDS. No, sir.

Mr. SHEARN. You do not know whether the Reading Coal & Iron Company pays any freight or not, do you?

Mr. EDMONDS. I presume they do.

Mr. SHEARN. I say do you know?

Mr. EDMONDS. No, sir.

Mr. SHEARN. How does the amount of coal sold at tide water
1073 here by the Reading Coal & Iron Company compare with the amount sold by all these other concerns you have mentioned? About what per cent of the total sold here do you sell?

Mr. EDMONDS. I have no access to such tonnages. I do not know.

Mr. SHEARN. Don't you keep any track of the amount of coal sold at tide water?

Mr. EDMONDS. By ourselves; yes, sir.

Mr. SHEARN. Don't you have access to reports showing the amounts sold by other companies?

Mr. EDMONDS. No, sir.

Mr. SHEARN. Do you know a man named Ruley?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. What is his business?

Mr. EDMONDS. He is an accountant, I presume.

Mr. SHEARN. Don't you furnish him a statement of the prices realized by you for the sale of coal at tide water?

Mr. EDMONDS. I do not.

Mr. SHEARN. Does not he have access to your books to find what you get?

1074 Mr. EDMONDS. No, sir. I doubt if Mr. Ruley has ever been in my office.

Mr. SHEARN. Don't you see reports from month to month compiled by Mr. Ruley, showing the amount sold by each company at tide water and the amount paid for it?

Mr. EDMONDS. No total report; no, sir.

Mr. SHEARN. Well, what report do you see?

Mr. EDMONDS. I think there is a report in regard to the tonnages into the city of Brooklyn, which, I think, is compiled by Mr. Ruley.

Mr. SHEARN. That is not very large, compared with the amount sold in New York, is it?

Mr. EDMONDS. Not so far as we are concerned.

Mr. SHEARN. Does that report gotten up by Mr. Ruley show the amount sold by the other companies at Brooklyn?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Then, from those reports, what should you say as to the percentage of the total coal sold at Brooklyn is sold by your company?

Mr. EDMONDS. I never figured that out. I could make a guess.

Mr. SHEARN. Well, could you approximate it?

1075 Mr. CAMPBELL. Do not encumber the record with that. You will be able to get at that. This man does not know.

Mr. SHEARN. Don't you know?

Mr. EDMONDS. I know what we delivered last year there.

Mr. SHEARN. What was it?

Mr. EDMONDS. About 75,000 tons.

Mr. SHEARN. Was not that a very small part of what was delivered there by these other companies?

Mr. EDMONDS. To the best of my recollection; yes, sir.

Mr. SHEARN. It is a fact, is it not, that the coal of the Reading Coal & Iron Company sold and delivered at tide water here is insignificant in quantity when compared with the amount sold by all these other companies?

Mr. EDMONDS. As I have no access to the tonnages, I am not prepared to admit the insignificance.

Mr. SHEARN. Do you know what proportion of your annual tonnage is sold during the months of April, May, and June in each year? Are your sales heavy or light during those months?

Mr. EDMONDS. So far as New York is concerned?

1076 Mr. SHEARN. Yes, sir.

Mr. EDMONDS. Well, that varies.

Mr. SHEARN. I suppose it does vary. Take the year 1901, and take the months of April, May, and June, a quarter of the year. Now, were the sales in April, May, and June, 1901, a quarter of the entire amount sold during the year?

Mr. EDMONDS. Indeed I can not answer that question. I do not remember.

Mr. SHEARN. Have not you any idea as to the volume of your business from month to month—whether it goes up or down?

Mr. EDMONDS. I keep no record of that.

Mr. SHEARN. You do not need to keep a record. You have a recollection of it?

Mr. EDMONDS. My recollection is that we did a fair business during those months.

Mr. SHEARN. How do those months compare with the other months?

Mr. EDMONDS. Probably the three succeeding months were light, as the trade generally is in those months, and for the following three months were heavier again.

1077 Mr. SHEARN. That is, in April, May, and June it is heavy; then it falls off for the next three months, and then it gets heavy again? That is correct, is it not?

Mr. EDMONDS. Yes, sir; that is my experience.

Mr. SHEARN. That is all.

Com'r PROUTY. In what places do you sell this coal?

Mr. EDMONDS. Principally at New York Harbor and Long Island points.

Com'r PROUTY. For what destinations?

Mr. EDMONDS. Brooklyn, up the Hudson, New Haven, Hartford, Bridgeport, New London, and those points.

Com'r PROUTY. Do you sell in Boston?

Mr. EDMONDS. No, sir.

Com'r PROUTY. How long have you been engaged in the sale of this Reading coal the same way you are now selling it?

Mr. EDMONDS. About ten years.

Com'r PROUTY. You say that in 1901 a price circular was published, and that those circulars have continued to be published during the summer. Was the price named in those circulars absolutely adhered to by you?

Mr. EDMONDS. In most instances; yes, sir.

Mr. CAMPBELL. The question was, absolutely?

1078 Mr. SHEARN. Do not interfere with the witness.

Com'r PROUTY. I do not ask whom you preferred, but simply ask if you did adhere to that price?

Mr. EDMONDS. In most cases, but not all.

Com'r PROUTY. It applied to most of the coal sold?

Mr. EDMONDS. Yes, sir.

Com'r PROUTY. Going back five years before that, how was the price at which this coal was sold fixed?

Mr. EDMONDS. I do not know, sir.

1079 Com'r PROUTY. How did you get your price?

Mr. EDMONDS. From our superior officers.

Com'r PROUTY. Was there at that time a market price, the same as it was in 1891?

Mr. EDMONDS. In 1901?

Com'r PROUTY. I mean 1901.

Mr. EDMONDS. Market price?

Com'r PROUTY. A general market price.

Mr. EDMONDS. I presume so.

Com'r PROUTY. Do you know what the general market price was?

Mr. EDMONDS. Yes, sir; I had to know it.

Com'r PROUTY. And did all the companies make the same general market price in 1897 or 1898, perhaps?

A. I am not sure; I do not know that.

Com'r PROUTY. Have you any impression about that?

Mr. EDMONDS. No, sir; I have not.

Com'r PROUTY. Did you in those years deviate from the market price. Was the same price maintained the entire season, the same way it was during the season of 1901?

Mr. EDMONDS. I can recollect deviating from prices occasionally; yes, sir.

1080 Com'r PROUTY. Were the occasions more frequent then or less frequent than in 1901?

Mr. EDMONDS. I should say less frequent.

Com'r PROUTY. You think there was less deviation from the market price in 1897 than there was in 1901?

Mr. EDMONDS. Yes, sir; less occasion for it.

Com'r PROUTY. Why do you say less occasion for it?

Mr. EDMONDS. The market was empty of coal following the strike of 1900—less occasion for the deviation of price.

Com'r PROUTY. You mean there was less occasion to deviate in 1901 than there had been before?

Mr. EDMONDS. Yes, sir.

Com'r PROUTY. Do you actively compete in the city of New York for the sale of this coal?

Mr. EDMONDS. Actively compete?

Com'r PROUTY. Yes; do you make an effort here in the city of New York to sell?

Mr. EDMONDS. Yes, sir.

1081 Com'r PROUTY. What do you do to secure business? What measures do you take to sell coal in the city of New York?

Mr. EDMONDS. We offer the different grades of coal to the different dealers who handle it.

Com'r PROUTY. You solicit their business?

Mr. EDMONDS. Yes, sir.

Com'r PROUTY. Do you know what, if any part, of all the coal sold in New York you sell?

Mr. EDMONDS. No, sir.

Com'r PROUTY. Do you know how much coal is consumed in the city of New York?

Mr. EDMONDS. Anthracite?

Com'r PROUTY. Anthracite coal.

Mr. EDMONDS. I have seen it stated in a manual. It is about seven millions or seven millions and a half.

Com'r PROUTY. How much do you sell in this city?

Mr. EDMONDS. About a million tons; sometimes more and sometimes less.

Com'r PROUTY. You are referring now to coal which is consumed in the city?

Mr. EDMONDS. No, sir; I am referring to the amount of coal I sell. Some of it goes up the Sound.

1082 Com'r PROUTY. How much anthracite coal is consumed in the city of New York in a year, generally speaking?

Mr. EDMONDS. I can say seven millions to seven and a half millions.

Com'r PROUTY. How much anthracite coal do you sell for consumption in the city of New York?

Mr. EDMONDS. I estimate about two-thirds of my tonnage.

Com'r PROUTY. Are you instructed by your superiors to actively compete for the coal business in this city?

Mr. EDMONDS. I am supposed to; I am not in need of any instructions on that point.

Com'r PROUTY. How is it in the city of Brooklyn; do you include that in New York?

Mr. EDMONDS. I include that.

Com'r PROUTY. Are you at liberty to vary from this price named by the price circular?

Mr. EDMONDS. I can not do so without conferring with my superior officers.

Com'r PROUTY. Do you think that other dealers in New York City vary from that price?

Mr. EDMONDS. I am sure I do not know.

1083 Com'r. PROUTY. Do you find in the course of your business any reason to suppose or apprehend that?

Mr. EDMONDS. Yes, sir; I have seen instances where I supposed it was done.

The CHAIRMAN. You sometimes deviate from the circular price yourself?

Mr. EDMONDS. I have sold at less than circular price in some instances; yes.

The CHAIRMAN. How recent a date?

Mr. EDMONDS. Last spring—that is, a year ago.

The CHAIRMAN. Now, your former answers were confusing to me. Have your deviations from the circular price been more or less frequent during the last two years than they were before that time?

Mr. EDMONDS. I should say less frequent.

The CHAIRMAN. I understood you to say otherwise originally, and then——

Mr. CAMPBELL. Your honor's apprehension was correct. He made a mistake.

The CHAIRMAN. If there are no more questions to be asked of this witness he may be excused.

Mr. SHEARN. I would like to ask a question which was suggested by Commissioner Prouty. You were asked whether you received
1084 any instructions to go out and actively compete for business against these other companies, and what was your answer to that question?

Mr. EDMONDS. That I didn't need such instructions.

Mr. SHEARN. That you did not need such instructions?

Mr. EDMONDS. Yes, sir; I would go out for business naturally if I had coal to sell.

Mr. SHEARN. Do you mean to have this court believe that you are actually competing with the sales department of the Lehigh & Wilkesbarre Coal Company for business?

Mr. EDMONDS. I do.

Mr. SHEARN. Did you ever get a customer away from them?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Who is it?

Mr. CAMPBELL. Now, now, look here, I object to that; that is going too far.

Mr. SHEARN. How many customers have you ever weaned away from the Lehigh & Wilkesbarre Coal Company?

Mr. CAMPBELL. I object to that also. Here we are talking
1085 about the dealings of certain merchants and about their means and methods of conducting business and getting business from their competitors. It certainly does not belong to this inquiry. I have to state further objections to the whole testimony, but I will present them later.

The CHAIRMAN. Precisely what is your question, Mr. Shearn?

Mr. SHEARN. I asked him how many customers he succeeded in weaning away from the Lehigh & Wilkesbarre Coal Company during this active competition he says he carries on.

Mr. CAMPBELL. I object to it.

The CHAIRMAN. Well, the form is objectionable. It calls for more detail than is necessary.

Mr. SHEARN. I will change the form of the question. You have stated that you knew of one customer that you had gotten away from your friend Heilner.

Mr. CAMPBELL. That is not what he stated.

The CHAIRMAN. He did not quite say that.

Mr. SHEARN. I withdraw the characterization. You have succeeded during these ten years you have been here in getting one customer away from the Lehigh & Wilkesbarre Coal Company?

1086 Mr. EDMONDS. You are going back over a period of ten years now.

Mr. SHEARN. Well, we won't go any further back than the time when Mr. Baer became president of the Reading Company, say April, 1901. Now, since April, 1901, have you obtained a customer, procured a customer to leave, or a dealer to leave the Lehigh & Wilkesbarre Coal Company and trade with you?

Mr. EDMONDS. Not entirely; no, sir.

Mr. SHEARN. Not entirely?

Mr. EDMONDS. Not entirely; no, sir.

Mr. SHEARN. Well, have you procured any business with customers of the Lehigh & Wilkesbarre Coal Company since that time that you didn't have before?

Mr. EDMONDS. I have secured some tonnage which I believe came from the Lehigh & Wilkesbarre Coal Company. I don't know it. In other words, out coal has gone in to a customer who used Lehigh & Wilkesbarre Coal Company before.

Mr. SHEARN. Yes; in some small quantity?

Mr. EDMONDS. That depends on what you call a small quantity.

Mr. SHEARN. How did that about, do you know?

1087 Mr. EDMONDS. I made the sale; yes, sir.

Mr. SHEARN. Well, did you go out and solicit this man's business away from the Lehigh & Wilkesbarre Coal Company?

A. I invited the parties I have in mind to the office——

Mr. CAMPBELL. I think this is very unfair, your honor.

Mr. SHEARN. What is unfair about it?

Mr. CAMPBELL. According to the common laws of England, which prevail here, the private business and the methods and the arts of every trade are protected and honored—and you are endeavoring to dishonor them.

The CHAIRMAN. The purpose of the inquiry is to ascertain to what extent there is competition between the company represented by the witness with other companies here in New York. And without going into details which might——

Mr. MOOT. As this affects all of the companies, I would like to be heard, if this is to go as far as that. I hadn't supposed we were trying the question of whether there was competition in selling coal. I hadn't supposed that that was the question here.

1088 Mr. SHEARN. We have got a little beyond the point at which we were when you went to Buffalo, Mr. Moot.

Mr. MOOT. If the counsel will wait just a minute. I have been very quiet. Now, let me state the thing as I understand it, just briefly. As I understand it, this Commission is authorized by law to conduct two classes of proceedings. One proceeding, such as you conducted recently and such as you have reported in recently, where there is no complainant before you, there you are, so to speak, an administrative body, not exercising judicial functions, but exercising the functions of an administrative body, and not governed by any strict rules of evidence whatever, because you are making no judicial presentation or award of any kind against anybody. That comes under section 12. In the other class you

have a complainant. That is this case. That complainant makes a definite written complaint—has to. The respondents have to make a definite written answer. That creates an issue. That issue is before you for trial. You try that issue like a quasi judicial body, as you are in the trial of that issue. The result of that trial is findings that the law makes prima facie binding upon the parties proceeding before
1089 you. Now, in order to have due process of law in this country, or any country that knows the English law, the proceeding must be governed by rules of evidence to some extent, at least, and is not like a proceeding in any continental country where rules of evidence are unknown, as we found out in the Dreyfus case. My position is that it is not legal evidence on the question of whether the rate is reasonable or unreasonable. It does not bear on it legitimately at all. It would be absolutely competent and proper evidence before the United States district attorney to determine whether he would prosecute under the Sherman Act, and my friend has said that he is bringing this in here for the purpose of having you gentlemen act as a sort of a skirmish line to get such evidence to go there; but I say this is not competent or proper. It would be entirely competent and proper evidence for the purpose of taking any proceeding under the Sherman Anti-trust Act, or entirely competent and proper evidence if there was a proceeding in this State of New York under its antimonopoly act with reference to the violation of that; but there is no such issue in this pleading. The issues in this pleading are, briefly, three: That we charge an unreasonable
1090 amount, that we discriminate, and that we pool our earnings. Now, I have heard no suggestion that we undertook to pool our earnings, so that is out. So it gets down to whether we charged an unreasonable rate or whether we discriminated.

Now this evidence can not possibly bear on either of these events. Why then should it be excluded? For two reasons: first, it takes the time of the counsel and the Commission and everbody else on a wholly irrelevant matter; and the second is deeper than that; suppose you make an award against us, and suppose that award is questioned, as it may properly be in the courts, and the record is brought up, are we to be bound by prima facie findings influenced by irrelevant evidence, not bearing directly on the issue outlined before you, evidence that would not be admissible in that court de novo at all, and are we to have put into the foundation, the very botton of the structure, something that the law of evidence does not permit? It seems to me we should not be required to have anything of that sort. Now I can see, I can see very well, that you have to try these cases broadly, within these issues,
1091 and I can see that the condition of the coal business, how it is done generally, not specifically, how the coal is transported to market and sold, and how it is mined and transported to market, the general conditions of the coal business—I can see why you require proof on such subjects in a broad way in an issue of this sort; but here our learned friend is putting questions not on anything of that sort at all. He is putting questions as to competition between these various companies, and this gentleman says there is competition, the witness says there is; then he asks him, "who did you get away from somebody else, what arts and devices"—what is what he is asking now—"did you compete to get somebody away from your friend, somebody else," and all that sort of

thing? Now can such evidence be competent? Leave out of view altogether whether it is proper before a body of this dignified character, representing the nation, to put questions of that character, where the real issue is whether this is a reasonable or an unreasonable rate, and whether it discriminates or does not discriminate—leave those things out of consideration, look at the propriety of it, and it seems to me most improper to inquire along any other subject; and I can not see the legality of
1092 such evidence. I can not see how it can legitimately affect the question of whether we charge more than we ought or not. It seems to me that question is affected by the question of how much our road cost to build, how much our rolling stock costs, how much the wages of our men are, how many we have to employ, and other things of the same character, where the cars come down and have to go back empty, and all that sort of thing. I have heard hardly a single word of testimony on all this trial—and I have been reading very patiently what occurred while I was away—I have not found scarcely one word in this entire record bearing legitimately and directly upon those issues. Now, it seems to me that it is about time that the testimony that does not bear on the issue, but that is under the antitrust act, known as the Sherman law, that the counsel states in his opening he proposes to exploit here—it seems to me it is time that was all shut out and left to the tribunal appointed by the Government for its consideration, and that you come right down to the strict issue you are delegated, very properly, to try, and that we get at the question of whether our rates are reason-
1093 able or unreaonable, and whether they have discriminated or not, and let us have a little evidence on that issue.

The CHAIRMAN. What a carrier actually gets and has been getting may properly be shown in determining the reasonableness of its charges.

Mr. MOOT. He has not asked that question during this entire hearing.

The CHAIRMAN. I understand that.

Mr. SHEARN. I have asked for the books to find out.

The CHAIRMAN. You do not question that in this case the reasonableness of a given railway charge as to what the carrier has received or is receiving or is accustomed to receive may properly be shown.

Mr. MOOT. Not at all. I concede that that is the most competent evidence on the question of rate.

The CHAIRMAN. We are inclined to think and have so ruled, as I understand, that the circumstances and conditions under which the carriers make a given rate may be shown as having some possible bearing upon the reasonableness of that rate. Now, it appears in this case that a very large percentage of this coal is carried or is purchased on the basis of what it sells for at tides, sir. The carrier, therefore, gets an
1094 uncertain and varying sum——

Mr. CAMPBELL. That we don't confess.

The CHAIRMAN. Now, your company down here, paying for it on the basis of what you sell it for, what you do not pay to the parties from whom you buy that coal goes to the carrier?

Mr. MOOT. I see the bearing of this suggestion; now let me answer that just briefly. They have proved the existence of all these coal companies, which, with the exception of two chartered railroads whose charters antedate the present constitution of Pennsylvania, handle this coal business. They have no evidence about these two railroads, as far

as I have discovered in the record, and I have heard none, as to how their business is done. No objection has been made, at least I have not heard any, of the counsel asking what coal sold for here in New York, and you have plenty of testimony in the record that it is sold all the way from four and five dollars up to $20 a ton under various and different circumstances. Now, those coal companies controlled by those railroad companies have been getting those various prices, and I concede it is entirely competent for the counsel to bring in here, as
1095 was suggested by a member of this Commission, some trade journal, coal-trade journal, to show what the prevailing coal price is, to have it all compiled and put into tables, by years, if he wants to—there is no secret about it—of course, with a great product like this—millions of tons—and show the prevailing price of coal. I suppose individual prices have no particular significance if there is a prevailing price and a prevailing market, as we all know there is. Mr. Sturgis's testimony—I have just been reading it—tells how even in a time like last winter letting the coal loose would knock the market, right in the very heart of the season, under abnormal conditions. Now, that being the situation, I can not see how questions of this witness about the individual efforts to increase or decrease their findings, to get a purchaser away from somebody else, and what arts and devices were used to get the customer away, can be material.

The CHAIRMAN. If it is proper to show at what price coal sells here, as having some bearing on this question, is it not proper to show whether that coal is sold under conditions of competition or otherwise? Wouldn't that presumptively have some effect upon the price?

1096 Mr. MOOT. I do not see how; I do not see that the question of competition comes in, and I will tell you why.

Let us suppose, first, that this coal has been sold for a long period of time, as counsel claims, without competition, yet he also alleges that there have been thirty per cent of these people independent operators, and he alleges, or claims, that about sixty million tons is produced, so that about eighteen million tons are produced by these independent operators. Now, the question is, all the while, whether those individual operators are paying a rate for carrying their coal that is unreasonable and unjust. Now, the prevailing rate at which coal is sold must appear from the market quotations—must appear from the witnesses without any necessity for going into individual transactions—and it seems to me, to turn this proceeding from a proceeding to find out the rate, and whether there has been a discrimination or not, to an accounting, so to speak, between these various coal companies and these various operators, to see which has been
1097 the sharpest, which has been the smartest, and which has got the most or got the least, and why, and why they did not compete more actively, and why they didn't compete as actively as they did—it seems to me perfectly apparent that all that is proceeding under the Sherman anti-trust law, distinctly, clearly, and directly; but it has not anything to do with the rate or with the discrimination. I can not see that it has.

Mr. CAMPBELL. I want to insist on my first objection on the particular point of invading into our trade secrets in addition to the objections that have been made.

The CHAIRMAN. Mr. Shearn, I do not think it is important to extend this examination into matters of detail, certainly not in a way to lead to

a disclosure of business secrets and personal relations of any sort. In a general way, and to a limited extent, we will allow you to show, by this witness, the extent of the competition which, he says, he takes to hold trade.

Mr. SHEARN. That is all I am trying to do. The gentleman misses the point entirely.

The CHAIRMAN. Do not spend a good deal of time——

Mr. SHEARN. I may have to spend a good deal of time. I think it is important. I think it is necessary to state why I think it is
1098 important, because you stated my ideas—my ideas on it precisely, and counsel has not answered that suggestion yet. He does not seem to think, in considering the price of coal at tide water, as bearing on the question of a reasonable rate or not; that it is of the slightest importance whether that price is a competitive price or not. He does not answer that suggestion at all. That makes all this testimony proper, and it is proper beyond all that, under the third allegation of the petition, that there is a pool, because given an allotment of tonnage when the coal is started and given a common freight rate and given a common price down here, it is a mathematical proposition that the proceeds of the business are divided in the proportions fixed by the original allotment agreement; therefore it is directly competent upon the pooling issue if it were not competent on the question of reasonable rate.

The CHAIRMAN. We think a distinction should be drawn between those matters which show the nature and extent of the competition and those which go into matters of private business. Now, he states——

Mr. SHEARN. Well, I resist at the outset the idea that it is private business. It is not. It is public business, and I shall urge that at all stages of this proceeding. It is not a private business.

1099 The CHAIRMAN. What I have in mind is this: He states that in some instances he has sold coal for less than the circular price and by authority of his superior officer. He states in one instance he sold coal to a customer who previously bought from another coal company. Now, it does not seem to us you have a right to ask who that customer was.

Mr. SHEARN. I have not?

The CHAIRMAN. Or when that transaction took place or the particular inducements.

Mr. SHEARN. I certainly can ask when; whether it is within the period embraced by our proceeding or not.

The CHAIRMAN. Yes; whether since the 1st of April, 1901.

Mr. SHEARN. First he says he got a customer away. Now it turns out that he did not; that he had sold some customer some of his coal. Of course I bow to the decision, but I shall not rest with that answer. I asked it because of the very pertinent question put by Com'r Prouty, which I had overlooked, bearing on the subject of whether there was any competition between his company and these other companies; I meant to ask him that, but I forgot it; but when he said in a broad
1100 way that there was and that he did not need any instructions, why I could not stop with that answer. Now, when we come to examine into that proposition so far, we have located a part of the business with some customer that has been drawn from one company to his company.

Now, did you go out and solicit this man's business away from the Lehigh & Wilkesbarre Coal Company?

Mr. EDMONDS. We had a certain quantity of coal which would satisfy a party's trade, and it was the trade I was anxious to secure. I wished to open up negotiations with him, and he purchased the coal we had, notwithstanding the fact, to the best of my knowledge and belief, he had formerly been a customer of the Lehigh & Wilkesbarre Coal Company.

Mr. SHEARN. But you do not know whether he had been their customer or not?

Mr. EDMONDS. To the best of my knowledge, he had.

Mr. SHEARN. What do you mean by "best of your knowledge?" You were very particular on the question of knowledge when I was asking you about circulars of the companies. Do you know that you know he was a customer of the Lehigh & Wilkesbarre, or that you guessed at it?

1101 A. He had been buying Lehigh & Wilkesbarre coal.

Q. To your knowledge?

A. Yes.

Mr. SHEARN. What inducements did you hold out to him?

Mr. CAMPBELL. I object to that.

Mr. SHEARN. Did you make a better price than he could get Lehigh & Wilkesbarre coal for?

Mr. CAMPBELL. I object to that for the reason that it comes within the ruling of your honors.

The CHAIRMAN. That question, Mr. Shearn, is perhaps in objectionable form, though it goes to the fact, which is consistent with the ruling we have made and with the question already asked of the witness by Commissioner Prouty. That is to say, we want to see what the nature of this competition is. Now, he may state in a general way what he does to sell here in competition with other coal companies.

Mr. SHEARN. I do not want it too general. Did you offer him a better price than the Lehigh & Wilkesbarre was offering?

A. We quoted a price for what we had and he accepted it.

Q. Was it a better price than the Lehigh & Wilkesbarre were willing to sell for?

1102 Mr. EDMONDS. I do not know.

Mr. SHEARN. Did you speak to Mr. Heilner about it before you did it?

Mr. EDMONDS. I did not.

Mr. SHEARN. Can you recollect any other instance of your getting any business away from Lehigh & Wilkesbarre Coal Company during the period I have mentioned?

Mr. EDMONDS. I can.

Mr. SHEARN. You can not.

Mr. EDMONDS. I can.

Mr. SHEARN. You can?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. How many?

Mr. EDMONDS. Well, I can recall two positively, positively recall two cases.

Mr. SHEARN. Two other cases?

Mr. EDMONDS. One additional case.
Mr. SHEARN. That makes two.
Mr. EDMONDS. Yes.
Mr. SHEARN. In the first place, when did the one you have been testifying about take place?
Mr. EDMONDS. Within thirty days.
1103 Mr. SHEARN. Within the last thirty days?
Mr. EDMONDS. Yes.
Mr. SHEARN. When did the other take place?
Mr. EDMONDS. Within the same period.
Mr. SHEARN. That is since the April 1st, 1903, circular went out?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. Those are the only two instances since April, 1901, that you can recollect?
Mr. EDMONDS. They are the only instances I can recollect since April, 1903.
Mr. SHEARN. Now, but how about since April, 1901?
Mr. EDMONDS. There may have been more cases. I don't attempt to recall every instance of that kind. We get our business naturally by competition.
Mr. SHEARN. What?
Mr. EDMONDS. We get our business naturally by competition.
Mr. SHEARN. You mean to assure this Commission that you actually compete for business here in New York with the Lehigh & Wilkesbarre Coal Company or any other company?
Mr. EDMONDS. I have stated the case.
1104 Mr. SHEARN. Well, you have stated two cases in the last thirty days. I ask you if you can refer to another case since April, 1901?
Mr. EDMONDS. I probably could if I could brush my recollection up a bit.
Mr. SHEARN. We will give you a chance to brush it up. How long will it take you?
Com'r PROUTY. Are you referring to this Lehigh & Wilkesbarre——
Mr. SHEARN. At the present time. I am going to refer to the others in a moment.
Mr. EDMONDS. I can recall another case in 1901.
Mr. SHEARN. Did you quote a better price that time than the Lehigh & Wilkesbarre were offering?
The CHAIRMAN. We can not tell what they offered, Mr. Shearn.
Mr. SHEARN. Did you sell at circular price on this occasion in 1901?
Mr. EDMONDS. Yes, sir.
Mr. SHEARN. Did you sell at the circular price on these two occasions within the last thirty days?
Mr. EDMONDS. Yes, sir.
Com'r PROUTY. In that connection, can you offer better coal or
1105 quicker delivery than the Lehigh & Wilkesbarre Coal Company? That is, is your coal of the same grade or better quality?
Mr. EDMONDS. Lehigh coal is all grades?
Com'r PROUTY. I understand that, but coal of a certain grade takes a certain price?
Mr. EDMONDS. Yes.

Com'r PROUTY. Now, do you claim your coal, which takes a certain price, is any better than the Lehigh & Wilkesbarre, which takes a certain selling price?

Mr. EDMONDS. I think it is; yes, sir.

Com'r PROUTY. Do you make a better or quicker delivery, or a cleaner delivery than the other companies—do you claim that?

Mr. EDMONDS. No, sir.

Mr. SHEARN. Where was this coal to be delivered which was sold during the last thirty days, the coal you have mentioned—in New York?

Mr. EDMONDS. Some of it.

Mr. SHEARN. Where was the rest of it to go?

Mr. EDMONDS. Down the Sound.

Mr. SHEARN. Have you since April, 1901, obtained any of the customers of the Lehigh Valley Coal Company?

1106 Mr. CAMPBELL. I object to that testimony as absolutely unfair. I think your honor's ruling should confine the testimony to the general practice. I object to their going into the details of our business and exhibiting to our competitors our own secret methods which we adopt to obtain trade.

Mr. SHEARN. State whether you know of any large dealer in coal here in New York who deals with the Lehigh Valley Coal Company to whom you have sold any of the Reading coal since April, 1901?

Mr. EDMONDS. I do.

Mr. SHEARN. How many?

Mr. CAMPBELL. Now I object to that.

Mr. EDMONDS. I know of one.

Mr. SHEARN. You know of one?

Mr. EDMONDS. Yes, sir.

Mr. CAMPBELL. Mr. Edmonds, I protest against your answering until the Commission gives you the privilege to do so after I have made an objection.

Mr. EDMONDS. Pardon me.

The CHAIRMAN. Mr. Campbell, might it not be a conclusion; has he not a right to go a little further than that and test the meaning of his answer?

1107 Mr. CAMPBELL. I am quite in accord with your honor's suggestion and with the line of thought that the chairman has set forth, but he is probing after details that are objectionable. Keep this gentleman within your honor's ruling and you will have no complaint.

Com'r PROUTY. He asks the witness if he competes, and the witness says yes. Now, Mr. Shearn has to stand concluded by that answer unless he explains it. If you were in our position you would hardly feel satisfied with the general answer, and you would want to know more about it.

Mr. CAMPBELL. I am with you on that proposition. Begging your honor's pardon for the interruption——

Com'r PROUTY. Of course you would regard that it ought not to be brought down too fine, but fine enough to see——

Mr. CAMPBELL. I would like to say to the Commission at this point that this whole testimony is objectionable on the grounds that were stated. To be consistent with the principle that we have set forth hitherto I

should in respect to the bulk of the testimony have advised the witness to decline to answer, so that the question might be tested in the
1108 proper way, but I felt that it was so desirable—I won't use any stronger word—that the Commission should get some insight into the methods of business down here, that I should allow this witness to go on as far as we possibly could in this matter without violating the principle which other counsel asserted as to the materiality of this character of testimony. The whole testimony about the mercantile competition among these merchants we regard as utterly immaterial; and I want this protest to be considered all along.

The CHAIRMAN. He says he competes with these other coal companies. Let him tell us what he does, what efforts he makes to compete with them.

Mr. SHEARN. I have no objection to that, of course, only I do not want to stop there.

Mr. SHEARN. What do you do to compete?

Mr. EDMONDS. Well, if I have an article of coal, or quantity of coal for sale, I endeavor to find a customer for it, recommending its superior advantages, its superior qualifications, and if he is interested I quote him a price.

1109 The CHAIRMAN. What efforts do you make; do you go and see the various dealers?

Mr. EDMONDS. Sometimes.

The CHAIRMAN. Or send somebody to see them?

Mr. EDMONDS. Send somebody, or sometimes if they are downtown I ask them——

Com'r PROUTY. Ask him what price will take his business?

Mr. EDMONDS. I quote him a price for business.

Com'r PROUTY. That is circular price; do you ever ask him whether ten cents off that price would be an object?

Mr. EDMONDS. I have in the past; yes, sir.

Com'r PROUTY. Since 1901?

Mr. EDMONDS. No, sir; I do not think I have.

Com'r CLEMENS. This particular case you have spoken of, did they come to you or you go to them?

Mr. EDMONDS. Generally they came to me.

Com'r PROUTY. I am speaking of these three or four cases you have spoken of; did they hunt you up or you hunt them?

Mr. EDMONDS. I hunted them up in some of the cases.

1110 Com'r PROUTY. Do you compete, yourself, as actively against the Lehigh & Wilkesbarre Coal Company as you do against any other coal company?

Mr. EDMONDS. No, sir.

Mr. SHEARN. Now, returning to this instance you speak of, where you knew that you had sold some coal to a man who was ordinarily a dealer with the Lehigh Valley Coal Company, did you sell to him at the circular price?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. When did that transaction take place?

Mr. EDMONDS. Some of them recently and some of them over a year ago.

Mr. SHEARN. Did he come to you or did you go to him to make the transaction originally?

Mr. EDMONDS. He came to me.

1111 Mr. SHEARN. That is the only instance you recollect, as I understand it, where you have since April, 1901, sold your coal to anyone who was customarily a dealer with the Lehigh Valley Coal Company?

Mr. EDMONDS. Since 1891?

Mr. SHEARN. Since 1901.

Mr. EDMONDS. It is the only one which I recall vividly enough to testify to.

Mr. SHEARN. Do you recall selling coal to anyone within that same time who has been ordinarily, and who was at the time of such transaction, if any, a dealer with Williams & Peters?

Mr. EDMONDS. Several of our customers are regular customers of Williams & Peters. At least, that is the trade impression.

Mr. SHEARN. That there are several?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you sell to them at the circular price?

Mr. EDMONDS. I do; yes, sir.

Mr. SHEARN. And have during this time we have been speaking of?

1112 Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Are there any customers of Dickson & Eddy, who are also customers of the Reading Coal & Iron Company?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Several?

Mr. EDMONDS. Well, two or three.

Mr. SHEARN. And you have had transactions with them since April, 1901?

Mr. EDMONDS. Since April, 1901; yes, sir.

Mr. SHEARN. And in making sales to them have you sold at the circular price?

Mr. EDMONDS. In some instances I have charged more.

Mr. SHEARN. Since what time?

Mr. EDMONDS. The spring of last year.

Mr. SHEARN. During the strike?

Mr. EDMONDS. No, sir; we had no coal during the strike to sell.

1113 Mr. SHEARN. Were they regular customers of yours, or did you go out and get them?

Mr. EDMONDS. Dickson & Eddy offered the business to us.

Mr. SHEARN. They turned it over to you?

Mr. EDMONDS. No; they inquired the prices for certain grades of coal.

Mr. SHEARN. And they referred them to you?

Mr. EDMONDS. No; Dickson & Eddy bought the coal for them—for the parties in question.

Mr. SHEARN. Bought it from you?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. And did you charge Dickson & Eddy more than the circular price, did you say?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Do you recall how much more?

Mr. EDMONDS. Ten cents a ton.

Mr. SHEARN. What was the reason for charging them more than the circular price?

Mr. EDMONDS. Because they wanted a special coal, and we charged the extra price because we could get it.

Mr. SHEARN. Because there was some special grade of coal that they wanted?

1114 Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Other than that transaction with Dickson & Eddy are there any customers of Dickson & Eddy who are also customers of the Reading Coal & Iron Company—sales department?

Mr. EDMONDS. Occasional customers; yes, sir.

Mr. SHEARN. To whom you sold at the circular price?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Have they come to you, or have you gone out and asked them for their business?

Mr. EDMONDS. Both; that is, I have gone out for their business, either through my salesmen, or personally.

Mr. SHEARN. How about Ward & Olyphant? Are there any customers of Ward & Olyphant who, during this same period, have been customers of yours?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. How many—approximately?

Mr. EDMONDS. Well, several.

Mr. SHEARN. Have you sold to them at the circular price?

Mr. EDMONDS. Generally speaking, yes, sir.

Mr. SHEARN. Can you think of any instance where you have not?

Mr. EDMONDS. Not since 1901.

1115 Mr. SHEARN. Do you know of any instance where persons were regular dealers with the Delaware, Lackawanna & Western coal department, who were also customers of yours?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Covering this same period?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. And your sales to them have been made at the circular price, have they?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Now, do you mean to tell this Commission that you go out from your office here in New York, and have during this period, canvassing for business?

Mr. EDMONDS. I have occasionally; yes, sir; through my representatives or salesmen, frequently, generally.

Mr. SHEARN. How many men did you say you have under you—six?

Mr. EDMONDS. Six or seven; yes, sir.

Mr. SHEARN. Are they clerks or salesmen?

Mr. EDMONDS. Two are designated as salesmen.

Mr. SHEARN. And the rest are clerks?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. What is your business in the office? Your prin-
1116 cipal business is to stay in the office and take care of the business, is it not.

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. Has it been your habit to canvass the coal trade for the Reading Coal & Iron Company?

Mr. EDMONDS. I have done so; yes, sir.

Mr. SHEARN. How many times in the last few years?

Mr. EDMONDS. Well, not very often.

The CHAIRMAN. Do you mean to ask has he gone out himself, personally?

Mr. SHEARN. Yes, sir.

Mr. CAMPBELL. This method of confining the witness' testimony to the last two years is unspeakably unfair, because since the strike of 1900 there has never been coal enough to go around.

The CHAIRMAN. We appreciate that, Judge Campbell.

Mr. SHEARN. Do you advertise your coal and its qualities?

Mr. EDMONDS. In the papers, you mean?

Mr. SHEARN. Yes, sir.

Mr. EDMONDS. I do not; no, sir.

Mr. SHEARN. What methods do you use among these dealers, who also deal with these other companies, to induce them to trade with you?

1117 Mr. EDMONDS. I try to convince them of the superiority of our coal, prompt delivery. I try to convince them that we have better facilities and give them better preparation; if they are in the market for coal I quote them a price.

Mr. SHEARN. But you have no inducement in the shape of a price to offer?

Mr. EDMONDS. I do not know what that might be to them. I quote them our price.

Mr. SHEARN. Your circular price?

Mr. EDMONDS. The circular price; yes, sir.

Mr. SHEARN. And you do not offer any inducement in the way of anything under the circular price?

Mr. EDMONDS. Not in the way of price.

Mr. SHEARN. As to the territory that you cover, is your business confined to any specific section of the city or confined to any particular locality?

Mr. EDMONDS. The limits of my territory are as far east as Providence, including the State of Connecticut and the western part of Massachusetts, and Hudson River territory; that is, east of the Hudson River.

1118 Mr. SHEARN. And through that territory you do business?

Mr. EDMONDS. Yes, sir.

Mr. SHEARN. That is all.

Mr. CAMPBELL. Now, that the testimony is closed, I move to strike it all out as referring to the private business of the Reading Coal & Iron Company as a merchant, and to these other companies as merchants in regard to matters which have no relation with respect to the question of transportation submitted to your honors. I waive the objection to so much of the testimony as relates to the general or current or recent market price, of course, but as to those matters which relate to these dealers and to these people as merchants I move that it all be stricken out. I shall not encumber the record nor impose on your honors' patience by arguing the question, but will submit the proposition upon the remarks that were so properly made by the counsel, Judge Moot.

The CHAIRMAN. We are constrained to overrule the objection and allow the testimony to stand. If there are no further questions to be asked of the witness he will be excused.

Witness excused.

1119 HENRY E. MEEKER, a witness called on behalf of complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Meeker, where do you live?

Mr. MEEKER. New York.

Mr. SHEARN. Will you state your name, please, in full?

Mr. MEEKER. Henry E. Meeker.

Mr. SHEARN. What is your business?

Mr. MEEKER. Coal merchant.

Mr. SHEARN. How long has that been your business?

Mr. MEEKER. I have been in the business since 1889.

Mr. SHEARN. The name of the firm is what?

Mr. MEEKER. Meeker & Company.

Mr. SHEARN. How do you get the coal that you sell?

Mr. MEEKER. I buy it at the breakers in the Wyoming region.

Mr. SHEARN. Do you buy any coal from the railroad coal companies?

Mr. MEEKER. No; not any appreciable amount.

Mr. SHEARN. Do you buy the coal on a percentage basis—a percentage of the price realized for it at tide water?

Mr. MEEKER. The majority of it.

1120 Mr. SHEARN. On the basis of sixty-five per cent of the price at tide water?

Mr. MEEKER. At present on sixty-five per cent; yes, sir.

Mr. SHEARN. How long has that been the basis—for the last two years?

Mr. MEEKER. Since November, 1900.

Mr. SHEARN. During that time the price of coal at tide water, prepared sizes, has been as low as $4, has it not?

Mr. MEEKER. Yes.

Mr. SHEARN. Then when coal is $4 a ton you have to return $2.60 to the miner?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. For each ton of coal?

Mr. MEEKER. Yes.

Mr. SHEARN. Which leaves you $1.40 with which to pay the transportation?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. You also have to undertake the expense of selling that that coal, don't you?

Mr. MEEKER. Yes, sir.

1121 Mr. SHEARN. What is a fair cost, according to your experience, per ton, for selling prepared anthracite coal at tide water?

Mr. MEEKER. Ten to twenty cents, according to the tonnage, and according to the price and according to bad debts.

Mr. SHEARN. That is, ten to twenty cents a ton?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. So that is a further deduction that has come out of this $1.40 that is left?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. Then who bears the expense or cost of unloading at tide water; that is, unloading from cars into barges?

Mr. MEEKER. The companies do that.

Mr. SHEARN. What companies?

Mr. MEEKER. The railroad company.

Mr. SHEARN. The railroad company does that?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. And has been doing it during the period I have asked about—during the last two years?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. How about waste? On whom does the waste element fall?

Mr. MEEKER. We have to stand that.

1122 Mr. SHEARN. What does that amount to on prepared sizes in the long run, per ton?

Mr. MEEKER. I figure that in between ten and twenty cents for commission. I figured that in the cost of selling.

Mr. SHEARN. In the cost of selling, stated at ten to twenty cents a ton according to quantity sold and grade of the coal?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. What line does your coal come in over?

Mr. MEEKER. Some over the Lehigh Valley, the D., L. & W. some and the New York, Susquehanna & Western, owned by the Erie.

Mr. SHEARN. To what point does the coal come that you buy?

Mr. MEEKER. The Lehigh Valley comes—a portion of the coal we bring to tide water comes to Perth Amboy.

Mr. SHEARN. Where are the mines located whose coal comes to Perth Amboy?

Mr. MEEKER. Near Wilkesbarre.

Mr. SHEARN. What is the freight per ton, prepared sizes, from Wilkesbarre to Perth Amboy?

1123 Mr. MEEKER. During the last two years it has been $1.55.

Mr. SHEARN. To what point does the coal come on the Susquehanna?

Mr. MEEKER. That comes to Edgewater.

Mr. SHEARN. And from what point does the coal come?

Mr. MEEKER. Also near Wilkesbarre; just back of Wilkesbarre.

Mr. SHEARN. What is the freight from Wilkesbarre to Edgewater?

Mr. MEEKER. The freight on the coal coming to Edgewater is based on an old contract made nine years ago.

Mr. SHEARN. An old contract with your firm?

Mr. MEEKER. Yes, sir; an old contract with me personally.

Com'r PROUTY. Edgewater is in what State?

Mr. MEEKER. In New Jersey.

Mr. SHEARN. Locate it, please?

Mr. MEEKER. About opposite 110th street.

Mr. SHEARN. About opposite 110th street, Manhattan?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. What rate does the Susquehanna charge you?
1124 Mr. MEEKER. They charge me a percentage rate.
Mr. SHEARN. A percentage of the price at tide water.
Mr. MEEKER. Of the price at tide water.
Mr. SHEARN. And what percentage.
Mr. MEEKER. 32½ per cent.
Mr. SHEARN. 32½ per cent. To what point does the coal come in over the other road that you mentioned?
Mr. MEEKER. Over the D., L. & W., to Hoboken.
Mr. SHEARN. From the same region?
Mr. MEEKER. Yes, sir.
Mr. SHEARN. What do they charge you for freight?
Mr. MEEKER. They charge different rates on different sizes.
Mr. SHEARN. I mean prepared sizes.
Mr. MEEKER. $1.58.
Mr. SHEARN. That is the charge that has been prevailing during the last two years?
Mr. MEEKER. Yes; I think so. I do not do much business over the D., L. & W. There have been several months in the last two or three years when I have not done any.
Mr. SHEARN. When coal is $4 at tide water, you lose money on all you purchase, don't you?
Mr. MEEKER. Not on all; no.
1125 Mr. SHEARN. On prepared sizes?
Mr. MEEKER. No.
Com'r PROUTY. It depends on the road?
Mr. MEEKER. It depends on the road.
Mr. SHEARN. If it comes in on the Lehigh Valley?
Mr. MEEKER. I do if I have to pay $1.55.
Mr. SHEARN. Do you pay $1.55?
Mr. MEEKER. I do under protest.
Com'r PROUTY. How long since you have?
Mr. MEEKER. I have protested since November, 1900.
Com'r PROUTY. How long since you have paid $1.55?
Mr. MEEKER. Since November, 1900.
Com'r PROUTY. What did you use to pay before that?
Mr. MEEKER. Prior to that $1.55 the rates were adjusted at the end of the month on a basis equal to the difference between the cost of the coal to the Lehigh Valley Coal Company at the breaker and the price that the Lehigh Valley Coal Company received for the coal at tide water.
Mr. SHEARN. That was adjusted in the shape of a rebate for you at the end of the month?
Mr. MEEKER. To all shippers.
Mr. SHEARN. That was prior to November, 1900?
Mr. MEEKER. Prior to the previous strike to this one.
1126 Mr. SHEARN. How long had that arrangement been in force?
Mr. MEEKER. Several years.
Commissioner PROUTY. Can he tell us at about what rate that would actually work out?

Mr. SHEARN. Can you state at what rate your coal was brought down to tide water by the Lehigh Valley during that arrangement, say in the months of April, May, and June, 1900?

Mr. MEEKER. I would not want to say offhand.

Commissioner PROUTY. What was the lowest rate you got for coal under that arrangement?

Mr. MEEKER. I would not want to say without looking it up.

Commissioner PROUTY. You would not have any opinion as to what the average rate was for six or seven years previous to 1901?

Mr. MEEKER. I can not say now.

Commissioner PROUTY. Let us know approximately the lowest rate and the average rate.

Mr. SHEARN. Will you compile such a statement from your books for for the use of the Commission?

Mr. MEEKER. Yes, sir.

1127 The CHAIRMAN. Are those figures readily accessible to you?

Mr. MEEKER. I have them practically made up in the office now.

The CHAIRMAN. And it is very easy to ascertain what is the lowest rate you have actually paid and about what the rate has average prior to November, 1900?

Mr. MEEKER. Prior to the previous strike, yes, sir; prior to November, 1900.

Mr. SHEARN. Since November, 1900, you have been paying more?

Mr. MEEKER. Some months; yes, sir.

Mr. SHEARN. Some months you have been paying more?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. That has been during April, May, and June during each year when coal is cheapest at tide water?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. And you have protested against that?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. What have been the grounds of your protest?

Mr. MEEKER. That the rate was unfair, unreasonable, and excessive, and also that it was more than was being paid by other parties shipping over the road.

1128 Mr. SHEARN. What other parties?

Mr. MEEKER. I refer particularly to the Lehigh Valley Coal Company.

Mr. SHEARN. When coal was four dollars at tide water on prepared sizes and you were paying $1.58 to the D., L. & W., you were also losing money on every purchase?

Mr. MEEKER. I brought down practically no prepared sizes over the D., L. & W. It was so small that it did not amount to anything. Most prepared sizes were sent to other markets.

Mr. SHEARN. Such that you did bring down came down at a loss?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. Did you make any protest to them?

Mr. MEEKER. No written protest; no.

Mr. SHEARN. Did you make a verbal protest?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. To whom?

Mr. MEEKER. To Mr. Truesdell.

Mr. SHEARN. What did he say to you?

Mr. MEEKER. He didn't say much, to be honest, and I didn't say much. It was a very small business at any rate.

1129 Com'r FIFER. Has protest since November, 1900, been made in writing?

Mr. MEEKER. To the Lehigh Valley?

Com'r FIFER. Yes, sir.

Mr. MEEKER. Yes, sir; every time I have paid them.

Com'r CLEMENTS. Have you any understanding with that company or anybody else that that is to be adjusted?

Mr. MEEKER. I have been trying to get one without much success.

Com'r CLEMENTS. Have you had none?

Mr. MEEKER. No, sir; I cannot get it.

Mr. SHEARN. You have informed them that you intended to bring suit, have you not?

Mr. MEEKER. I have not exactly said that, but I do intend to.

Mr. SHEARN. With whom have you talked when you made the protest?

Mr. MEEKER. I have talked with Mr. Kingston.

Mr. SHEARN. Who is Mr. Kingston?

Mr. MEEKER. I think he is the vice-president. And also with Mr. Thomas.

Mr. SHEARN. Have they told you whether or not they would adjust it?

1130 Mr. MEEKER. They have told me that they did not consider I had been discriminated against and practically said they would not adjust it.

Mr. SHEARN. What have you observed here in New York in the last two years as to the prevalence of the same price among all these coal companies for the same grade of coal at the same time?

Mr. MEEKER. That is a little outside of my business. I do not do any business with the companies.

Mr. SHEARN. You don't do any business with the companies?

Mr. MEEKER. Not to amount to anything.

Mr. SHEARN. That is all.

Mr. GOWAN. I shall want to cross-examine Mr. Meeker, and ask to have it postponed until afternoon.

The CHAIRMAN. Will you bring those figures or ascertain what they are, as counsel desires to examine you upon them? Can you bring them at 10.30 to-morrow morning and be here for further examination?

Mr. MEEKER. I think so, if I can find them in my desk. I have them all made up.

The CHAIRMAN. Very well, you will be excused until 10.30 to-morrow morning.

Com'r PROUTY. How much coal do you handle a year?

1131 Mr. MEEKER. Over the Lehigh Valley?

Com'r PROUTY. No; in all.

Mr. MEEKER. From three hundred and fifty thousand to a half a million tons.

Com'r PROUTY. Do you buy of independent coal operators in the coal region?

Mr. MEEKER. Yes, sir.

Com'r PROUTY. Are there any other dealers engaged in the same manner of business that you are?

Mr. MEEKER. Yes, sir; I think there is—only one other that deals in that same region. There are others that deal in the Lehigh.

Com'r PROUTY. Do you know anything about what part of the anthracite coal is handled by the independent operators without the intervention of the railroad coal companies?

Mr. MEEKER. It is very small.

Com'r PROUTY. You don't know the percentage?

Mr. MEEKER. I don't know the exact percentage?

Com'r PROUTY. Can you give us the approximate percentage?

Mr. MEEKER. I should say five per cent.

Com'r PROUTY. Where do you sell your coal?

1132 Mr. MEEKER. We sell it in New York, and all through the East.

Com'r PROUTY. Do you know what the circular prices are which are published by the railroad companies from month to month?

Mr. MEEKER. Yes, sir.

Com'r PROUTY. Do you follow that price?

Mr. MEEKER. When I can not get more.

Com'r PROUTY. Do you take less than that ever?

Mr. MEEKER. Yes, sir; when we have to.

Com'r PROUTY. So you are not governed by that price at all?

Mr. MEEKER. No, sir.

Mr. SHEARN. Do you get circulars from the coal companies' sales agents?

Mr. MEEKER. No; unless we go and ask for them, and sometimes—no; we never get them unless we ask for them.

Mr. SHEARN. Had it been your custom to ask for them?

Mr. MEEKER. Yes, sir; as a rule.

Mr. SHEARN. You have seen the circulars of the Reading Coal & Iron Company since April, 1901?

Mr. MEEKER. Yes, sir.

1133 Mr. SHEARN. Coming out monthly?

Mr. MEEKER. I do not know that I have seen every one of them.

Mr. SHEARN. You have observed that they come out in regular order month after month, numbered "Circular No. 1," "Circular No. 2," and so forth?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. When do you get those circulars, on the first day of the month?

Mr. MEEKER. When I send up for them.

Mr. SHEARN. You generally send up on the first day of the month, don't you?

Mr. MEEKER. Not necessarily.

Mr. SHEARN. Have you noticed what date they bear?

Mr. MEEKER. I have not.

Mr. SHEARN. Do you send to the D., L. & W. for their circulars?
Mr. MEEKER. No, sir.
Mr. SHEARN. Or to Ward & Olyphant, or Dickson & Eddy, or any of the others?
Mr. MEEKER. No, sir.
Mr. SHEARN. Just to the Reading?
1134 Mr. MEEKER. To the Reading for tide-water business and for line business, the western business; we get the circulars from the Lehigh Valley Coal Company.
Mr. SHEARN. The line price of coal is higher than the tide-water price, is it not?
Mr. MEEKER. Well, the tide-water price less the tide-water rate nets you less at the breaker than you can get on line business. There is not any circular for tide-water coal at the breaker.
Mr. SHEARN. You were asked if there were any others in New York that do business in the same manner that you do. Are there any others?
Mr. MEEKER. Yes, sir; I think there are two others.
Mr. SHEARN. Who are they?
Mr. MEEKER. Peale, Peacock & Kerr, and Whitney & Kemerer.
Mr. SHEARN. That is all.
The CHAIRMAN. You are excused until 10.30 o'clock to-morrow morning.

1135 P. B. HEILNER, a witness called on behalf of complainant, having been duly sworn, testified as follows:
Mr. SHEARN. Mr. Heilner, what is your business?
Mr. HEILNER. I am sales agent for the Lehigh & Wilkesbarre Coal Company.
Mr. SHEARN. Where is your office?
Mr. HEILNER. At 143 Liberty street.
Mr. SHEARN. You were in court during the testimony of Mr. Edmonds, were you not?
Mr. HEILNER. A part of the time.
Mr. SHEARN. Your office is on the same floor with his?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. And adjoins his?
Mr. HEILNER. It is next door to it.
Mr. SHEARN. How long have you been sales agent of the Lehigh & Wilkesbarre Coal Company?
Mr. HEILNER. Ten years.
Mr. SHEARN. How large an office force do you have?
1136 Mr. HEILNER. In my immediate office the force consists of three men, a boy, and a stenographer.
Mr. SHEARN. Do those men include any stenographers?
Mr. HEILNER. I have two salesmen.
Mr. SHEARN. That is in addition to those you have mentioned?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. You are employed, are you, by the Lehigh & Wilkesbarre Coal Company?
Mr. HEILNER. Yes, sir.

Mr. SHEARN. Then you have nothing to do with the losses on sales of coal or anything of that kind? You simply sell their coal for them?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. And are paid a salary and not paid by commission of so much a ton?

Mr. HEILNER. No, sir; by salary.

Mr. SHEARN. Have you been able to ascertain what is the approximate cost per ton of selling prepared sizes of anthracite at tide water when the business is conducted as your business is conducted?

Mr. HEILNER. Well, my general auditor tells me that my expense account, my cost account, is about three and a half cents.

1137 Mr. SHEARN. And the disbursements that you have to make, or which have to be made in connection with your office here in selling your coal amount to about three and a half cents?

Mr. HEILNER. Yes, sir; the cost of my selling amounts to about three and a half cents.

Mr. SHEARN. That does not include the cost of unloading into barges or waste or bad accounts?

Mr. HEILNER. No, sir; that is my cost of selling.

Mr. SHEARN. And excludes all the elements I have just mentioned?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. Have you been able to estimate what the average cost of selling coal here is when you include all those elements?

Mr. HEILNER. I do not know, sir.

Mr. SHEARN. It has been variously estimated between ten and twenty cents a ton. Does that accord with your experience?

Mr. HEILNER. No; my auditor tells me it amounts to about three and a half cents.

Mr. SHEARN. I mean including the cost of unloading, the cost of waste, and bad debts.

1138 Mr. HEILNER. It does not include that; the three and a half cents don't include that. I don't know what those other items are.

Mr. SHEARN. Do you sell any coal except for the Lehigh & Wilkesbarre Coal Company?

Mr. HEILNER. No, sir.

Mr. SHEARN. Nor have not during the last two years?

Mr. HEILNER. Not since I have been their sales agent—for ten years.

Mr. SHEARN. When you sell their coal, if there is any part of it that has been purchased from miners other than the Lehigh & Wilkesbarre Coal Company—that is, from independents—do you make any distinction in selling that coal?

Mr. HEILNER. No, sir.

Mr. SHEARN. All the coal you sell is called Lehigh & Wilkesbarre Coal Company coal, no matter whether they mine it or whether it is mined by independents and sold to the Lehigh & Wilkesbarre Coal Company?

Mr. HEILNER. That is right.

1139 Mr. SHEARN. We have spoken of prepared sizes. What general sizes do those generally include? What are they called?

Mr. HEILNER. Broken, egg, chestnut, and stove.
Mr. SHEARN. What is lump coal?
Mr. HEILNER. I presume lump coal is a prepared size, too, but it is not a commercial coal—I mean for the retail trade?
Mr. SHEARN. To whom do you remit the proceeds of sales of the Lehigh & Wilkesbarre coal?
Mr. HEILNER. The proceeds all come to the treasurer.
Mr. SHEARN. Where is the treasurer's office?
Mr. HEILNER. At 143 Liberty street.
Mr. SHEARN. He is not in your office?
Mr. HEILNER. Oh, no.
Mr. SHEARN. What is his name?
Mr. HEILNER. Waterman.
Mr. SHEARN. He is also treasurer of the railroad company, is he not?
Mr. HEILNER. I believe he is.
Mr. SHEARN. None of the proceeds come to you?
Mr. HEILNER. Well, now and then I get a check in my name to the order of the company and I turn it over.
1140 Mr. SHEARN. You turn it over to the treasurer?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. In billing this coal do you make any charge against the customer for the cost of unloading at the docks—for unloading the cars into barges?
Mr. HEILNER. No; the coal is sold on board.
Mr. SHEARN. Is it sold on board?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. That includes all that expense?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. And the customer does not have to bear that?
Mr. HEILNER. No, sir.
Mr. SHEARN. Who bears that?
Mr. HEILNER. I presume the railroad company.
Mr. SHEARN. In the matter of waste do you make any allowance to the customer for waste? Is your coal weighed on the cars at the terminal?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. At the tide-water terminal?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. And is it sold at that weight, or is any allowance made for waste in putting it on board barges?
1141 Mr. HEILNER. My impression is that the screenings are weighed back.
Mr. SHEARN. What do you mean?
Mr. HEILNER. Taken from the gross; taken from the total weight on top of the dock.
Mr. SHEARN. There is an allowance made for that?
Mr. HEILNER. I presume so; yes, sir.
Mr. SHEARN. Who fixes the price of the coal you sell?
Mr. HEILNER. My president fixes my prices.
Mr. SHEARN. Mr. Baer?
Mr. HEILNER. Mr. Baer; yes, sir.
Mr. SHEARN. Does he give you your instructions in writing or verbally?

Mr. HEILNER. Both.

Mr. SHEARN. At what time of the month do you ordinarily receive your instructions from Mr. Baer fixing prices at which the Lehigh and Wilkesbarre coal shall be sold?

Mr. HEILNER. About the first of the month.

Mr. SHEARN. Does it not generally just precede the first of the month?

Mr. HEILNER. Yes, sir.

1142 Mr. SHEARN. That has been the case since the end of March, 1901, has it not?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. Do you issue price circulars?

Mr. HEILNER. No, sir.

Mr. SHEARN. And have not during that time?

Mr. HEILNER. Not for seven or eight years.

Mr. SHEARN. You sold your coal at the price Mr. Baer told you to?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. Do you vary from that price?

Mr. HEILNER. No; I would not unless I submitted it to him.

Mr. SHEARN. You follow his instructions?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. At the end of every month, as I understand it, you get instructions from him as to the price you shall charge for these different sizes for the ensuing month at tide water?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. When you received those instructions either in 1901 or 1902, has Mr. Baer told you what the prices would be for the ensuing five months?

Mr. HEILNER. No, sir.

1143 Mr. SHEARN. Do you quote a price, or have you quoted a price during that time with fifty cents off for April and forty cents off for May, and so on?

Mr. HEILNER. No, sir; I have not.

Mr. SHEARN. You have not?

Mr. HEILNER. No, sir.

Mr. SHEARN. Do you quote a flat price?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. If the Reading price, for instance, is four fifty with fifty cents off, your price would be four dollars at the same time, would it not?

Mr. HEILNER. That is not what I would quote.

Mr. SHEARN. That is what you would sell at?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. And similarly you advance along ten cents and therefore as they advance up to the end of the five months?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. And after that you maintain a flat rate until the next change comes the following March?

Mr. HEILNER. Yes, sir.

1144 Mr. SHEARN. Do you keep advised as to the price of coal charged by other sales agents?

Mr. HEILNER. As nearly as I can. I study the market; yes, sir.

Mr. SHEARN. What have you observed as to the uniformity of price for the same grade of coal at the same time since April, 1901?

Mr. HEILNER. Well, it has been fairly uniform.

Mr. SHEARN. Has it not been just the same—that is, eliminating the strike conditions?

Mr. HEILNER. Well, except just after the strike.

Mr. SHEARN. They have been the same from month to month, except just after the strike?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. How do you carry on your business? Do you stay in the office?

Mr. HEILNER. Most of the time; yes, sir.

Mr. SHEARN. How do you get new business?

Mr. HEILNER. Well, I communicate with my customers personally and by letter.

Mr. SHEARN. You have a pretty well established set of customers dealing with you year in and year out, have you not?

Mr. HEILNER. I have dealt with some ten years; yes.

1145 Mr. SHEARN. And those are the ones you quote your prices to?

Mr. HEILNER. Among others; yes, sir.

Mr. SHEARN. Do you personally go out and try to get business from men you know are dealing with the Reading Coal & Iron Company?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. Have you as good luck as Mr. Edmonds?

Mr. HEILNER. Well, I don't know.

Mr. SHEARN. Do you know of anyone who has been trading with the Reading Coal & Iron Company to whom you have also sold coal since April, 1901?

Mr. HEILNER. Yes, sir; I do.

Mr. SHEARN. How recently?

Mr. HEILNER. I don't know when they bought anything from the Reading.

Mr. SHEARN. But you imagine they were Reading customers?

Mr. HEILNER. They are general customers.

Mr. SHEARN. How is that?

Mr. HEILNER. I mean they are customers—I don't know; that is, that they confine their business to the Reading.

1146 Mr. SHEARN. You mean they are people who buy generally?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. And of course you sell to them at the circular price?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. How do you procure any new trade?

Mr. HEILNER. Well, I went to Boston once a week for eight or nine years.

Mr. SHEARN. I am talking about since April, 1901. Have you been going to Boston once a week since April, 1901?

Mr. HEILNER. No, sir.

Mr. SHEARN. Your visits have ceased?

Mr. HEILNER. I go there, but not as often as that.

Mr. SHEARN. What have you been doing to get business since April, 1901? Have you been advertising?

Mr. HEILNER. We advertise some; yes, sir.

Mr. SHEARN. In the newspapers?

Mr. HEILNER. In the trade journals.

Mr. SHEARN. Do you go out and extol the qualities of your coal?

1147 Mr. HEILNER. I do at times.

Mr. SHEARN. And try to get business in that way?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. And you offer inducements such as you can, except you don't offer inducements as to price?

Mr. HEILNER. It has not been necessary.

Mr. SHEARN. What have you observed as to the proportion of coal that is sold in the months of April, May, and June of each year as compared with the months of July, August, and September; have the sales been usually heavier in April, May, and June than in July, August, and September?

Mr. HEILNER. I do not believe there is any rule about that; no two years are alike.

Mr. SHEARN. But don't you find a greater demand for coal when the price is cheap?

Mr. HEILNER. Well, yes, sir.

Mr. SHEARN. Well, has it not been your experience that more coal was sold in the months of April, May, and June during the years 1901 and 1902 than—I won't confine it to the years 1901 and 1902, because there were some abnormal conditions. Has it not been your

1148 experience generally?

Mr. HEILNER. The spring months are probably the best because trade opens up all over the country.

Mr. SHEARN. Those are the months of brisk business?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. And then there is a falling off, and then it becomes brisk again?

Mr. HEILNER. Yes, sir.

Mr. SHEARN. So a very considerable amount of business is done during the months of April, May, and June?

Mr. HEILNER. As a general rule, I think so.

Mr. SHEARN. What territory is under your jurisdiction?

Mr. HEILNER. Any territory I can reach from the shipping point.

Mr. SHEARN. What territories do you find that you reach in actual experience?

Mr. HEILNER. All down along the coast for the eastern business, New York, and all this territory adjacent.

Mr. SHEARN. How much coal does the Lehigh & Wilkesbarre Coal Company sell in this market every year?

1149 Mr. HEILNER. Well, my sales in 1901—1902 was a broken year—was a little over four million tons.

Mr. SHEARN. That was a fairly typical year?

Mr. HEILNER. That is about the average. Perhaps it was less than other years—than some previous years.

Mr. SHEARN. Do you know anything about freight rates?

Mr. HEILNER. No, sir; except—not from my own knowledge—except what I see printed.

Mr. SHEARN. What is that?
Mr. HEILNER. Except the printed lists, that is all.
Mr. SHEARN. That is all.
The CHAIRMAN. To what point on tide water does your coal come?
Mr. HEILNER. To Port Johnson.
The CHAIRMAN. And you sell it delivered there?
Mr. HEILNER. Yes, sir; on board vessel.
The CHAIRMAN. Your customers are dealers in coal?
Mr. HEILNER. Yes, sir.
The CHAIRMAN. Who buy it and take it from you at that point?
Mr. HEILNER. Yes, sir.

Mr. SHEARN. Do you know what the charges are for marine
1150 freight between Port Johnson and New York, alongside New York?

Mr. HEILNER. About twenty cents a ton.
Mr. SHEARN. It is a fact, is it not, that the marine freight from the different shipping points at tide water, New York, varies so as to make the alongside price uniform?
Mr. HEILNER. Well, I think so, as a rule.
The CHAIRMAN. Won't you explain what you mean by that?
Mr. HEILNER. Well, if my rates of freight were more I could not sell any coal. If my rates of freight were all out of proportion from other docks I could not sell my coal in New York or anywhere else.
Mr. SHEARN. There is a certain rate of marine freight from Port Reading alongside New York?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. Do you know what it is?
Mr. HEILNER. I think it is twenty cents; I am not sure.
Mr. SHEARN. There is another rate from Port Liberty?
Mr. HEILNER. Yes, sir; I think so.
Mr. SHEARN. Which is a shorter distance?

Mr. HEILNER. Yes, sir.
1151 Mr. SHEARN. Do you know what that is?
Mr. HEILNER. Fifteen cents, I think.

Mr. SHEARN. And there is another from Hoboken?
Mr. HEILNER. I should imagine that Port Liberty and Hoboken rates were the same.
Mr. SHEARN. There are, as a matter of fact, are they not?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. Now, the Weehawken rate?
Mr. HEILNER. I do not know as to that, whether it is more or less.
Mr. SHEARN. They are so arranged that alongside of New York the freight charges amount to the same thing no matter to what port the coal has been shipped?
Mr. HEILNER. Well, the freight charges are necessarily so arranged that a man can sell his coal at the same price in New York.
Mr. SHEARN. Arranged so that the marine charges added makes the alongside price at New York the same. That is the idea, is it not?
Mr. HEILNER. Yes, sir.
Mr. SHEARN. That is all.
1152 Witness excused.

Mr. THORNE. If your honors please, I make a similar motion to that made by Judge Campbell—that this testimony is irrelevant to the issues before the Commission. We have no desire to conceal the facts, but we wish to put our motion upon the ground that the testimony concerns the internal operation and management of this private industry—I mean this industry of buying, and selling, and mining coal, which is a matter in regard to which this Commission has no jurisdiction and we move to strike out the testimony and take the same ruling as was made in the case of the other witness.

The CHAIRMAN. You may call another witness.

Mr. SHEARN. Mr. Peters evidently misunderstood the subpoena and is not here. I therefore suggest that we take a recess.

The CHAIRMAN. We will take a recess until two o'clock.

At 12.50 p. m. a recess was taken until 2 p. m.

1153 AFTER RECESS.

The CHAIRMAN. Mr. Shearn, are you ready to proceed?

Mr. SHEARN. Yes, sir. Will Mr. Baer please take the stand?

GEORGE F. BAER, recalled.

Mr. BAER. You will permit me, Mr. Shearn, to call attention to some slight errors I made in speaking of the charter of the Temple Iron Company, which I think I designated as a special charter. The explanation is this: Congressman Kleiner and myself drew the original act. I thought it was a special act. It was passed on the 21st of March and we organized the company on the 22nd of March, 1873. There is a provision in the act to this effect:

"The incorporation of any association of persons under the provisions of this act shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature; and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter and no modification or repeal of this act affect any franchise obtained under the provisions of the same."

1154 The other error I made——

Mr. SHEARN. Have you the charter with you?

Mr. BAER. Yes, sir.

Mr. SHEARN. We will offer it in evidence.

(The same is marked "Exhibit No. 24.")

Mr. CAMPBELL. I want to offer the usual objection to the production of these papers, having reference only to parties in Pennsylvania. They have no significance or bearing on the issues before your honors under the act to regulate commerce.

The CHAIRMAN. The objection is overruled and the paper will be received.

Mr. BAER. The other correction I desire to make is that this furnace when I became president had a capacity of only about 225 tons a week. I overlooked the fact that the improvement, the new stack we built, which increased its capacity to 3,000 tons a month—about 100 tons a day—was made just a year or so preceding the time of the sale; and the other matter which Judge Campbell called my attention to is the fact

that the lands of the coal & iron company were not sold. I did not understand—there was an interruption at the time—that the
1155 lands in the mortgage were sold—in the foreclosure mortgage—to the company itself and its franchises were sold.

Mr. SHEARN. Who owns the lands?

Mr. BAER. The lands were purchased by Foster & Stetson, who represented the committee of the bondholders, and in the reorganization they reconveyed them to the coal & iron company.

Mr. SHEARN. Which still holds them?

Mr. BAER. Which still holds them. It is only a technical error.

Mr. SHEARN. Did you have an opportunity to ascertain what proportion of the entire anthracite output comes from independent mines? I asked you when you were on the stand before whether it was about thirty per cent, and you said you would furnish that information.

Mr. BAER. I found that our company—I can only speak for our company—I looked at that—the proportion is about one million tons out of nine. We buy from private operators, who ship over our lines from nine hundred to eleven hundred thousand tons a year, varying with the conditions of trade.

The CHAIRMAN. It all amounts to about nine millions?

Mr. BAER. Yes, sir; part of this coal we buy; three-fourths
1156 of it is mined by tenants of ours, parties to whom we have made leases, and the other quarter comes from individuals, operators who are not mining on lands owned or controlled by us.

Com'r PROUTY. Is it a condition of the lease that they shall sell to you?

Mr. BAER. No, sir; I think not. No; I am sure that provision is not in the lease. Most of them are old leases, and I do not remember looking at them recently.

Com'r PROUTY. Is any coal mined on the line of your road which is not handled by the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. On the line of our road?

Com'r PROUTY. Yes, sir.

Mr. BAER. Oh, yes; there are private operators who sell their own coal and pass it over our road.

Com'r PROUTY. Can you tell us how many tons of that coal are handled annually?

Mr. BAER. I am giving the total of the shipping of the private operators——

Com'r PROUTY. I understood you to say you purchased one million tons.

Mr. BAER. On an average, about a million.

1157 Com'r PROUTY. Are there any private operators on your line who sell their own coal?

Mr. BAER. Yes, sir.

Com'r PROUTY. Can you tell us the amount of that?

Mr. BAER. I will take 1901; that would be a reasonably full year [referring to book]. I do not think I can give that without taking too much time. I will send you an accurate statement of it. It can be ascertained by taking the coal that the railway company reports as transporting and

the number of tons in the coal & iron company report, and the difference between those two will give that figure. It will take some time to get at it.

Mr. SHEARN. If the Commission please, I desire to have noted the appearance, as associate counsel for complainant, of ex-Governor Budd, of California, whom I desire to introduce to the Commission.

Com'r PROUTY. Does any coal that originates on other lines reach your line for transportation?

Mr. BAER. Not on the Philadelphia & Reading, with the exception, probably, of one or two small collieries that have connections—small branch roads that have connections with us and the Pennsylvania. There are some other collieries.

The Lehigh Valley reaches into the same territory and
1158 connects with some of the collieries. We have a map here showing all sidings.

The CHAIRMAN. I did not quite understand your statement about mining the coal from lands leased by you.

Mr. BAER. We lease some of our lands to tenants that mine the coal.

The CHAIRMAN. And you mine some of it directly?

Mr. BAER. Yes, sir; the bulk of it is direct. The Reading Coal & Iron Company is operating to-day thirty-four collieries and five washeries.

The CHAIRMAN. About what is the normal output of the collieries you operate directly?

Mr. BAER. From eight to nine million tons a year.

The CHAIRMAN. And the output of the collieries you lease?

Mr. BAER. They are about 750,000 tons a year.

The CHAIRMAN. And then there are nine to eleven hundred thousand tons that you buy?

Mr. BAER. From nine to eleven hundred thousand, which includes some of the coal mined by our own tenants.

The CHAIRMAN. Then, in addition——

Mr. BAER. There is some private coal.

Com'r PROUTY. Are the leases you make terminable at will?

1159 Mr. BAER. No, sir; I do not know of any terminable at will. I have not made any leases under my administration. These are generally old leases.

Com'r FIFER. How long do they run?

Mr. BAER. As a general thing thirty years.

Com'r PROUTY. How many collieries do you own that you do not operate?

Mr. BAER. That we do not operate?

Com'r PROUTY. Yes, sir. You said you owned some that you did not operate, and some that you did operate.

Mr. BAER. We have a number of collieries undergoing repair, not in a condition to operate just now. I think the number of collieries we have is thirty-nine, and when I spoke of thirty-four being operated I meant those that are absolutely mining coal to-day. A few of them are not, for various reasons.

Mr. SHEARN. You spoke of some gentlemen who are interested in what you term the general business of the country being associated with

Simpson & Watkins, calling to your attention this project of a general sales department for all the companies.

Mr. BAER. Yes, sir.

Mr. SHEARN. Were any of these gentlemen connected with any of these respondent railway companies?

1160 Mr. BAER. Indeed, I could not tell. I can not tell, and decline to disclose their names and say who they were. I do not think I am privileged to say who had private conversations with me on that subject.

Mr. SHEARN. Was Mr. J. P. Morgan one of them?

Mr. BAER. He was not. I will answer that negatively. I will answer no further in that way, because that is a way you might go over all the people in New York, and by elimination you would finally get the man.

Mr. SHEARN. Did that project for a general sales company to handle all coal of these companies at tide water meet your approval at the outset?

Mr. BAER. It did not.

Mr. SHEARN. You said that a number of the other railroad presidents were seen by some one or other while this project was under contemplation and discussion. By whom were they seen, so far as you know?

Mr. BAER. I do not know. I do not recall. I was called in as counsel at a stage there——

Mr. SHEARN. Counsel for whom?

Mr. BAER. Counsel to put this whole matter in shape. I was called in by Mr. Foster, who was on the executive committee of the

1161 Reading Company and also of the Reading Coal & Iron Company. My connection with it began by Mr. Foster suggesting to the executive board, of which I was a member, that it would be a good thing for the Reading to take an interest in a syndicate being formed for the purpose of buying these powers, and I was directed to look into the thing and take charge of the legal status of it for the Reading Company, and other counsel were brought in—Mr. Stetson, and Simpson & Watkins had counsel—and there were some gentlemen interested in the collieries, and some were lawyers, and some had counsel. It was a long transaction. I can not recall it.

Mr. SHEARN. What part did you have in outlining the advantages of the scheme to the presidents of other railroad companies?

Mr. BAER. None, whatever.

Mr. SHEARN. Do you know who it was that promoted the scheme among the other railroad companies?

Mr. BAER. I do not know.

Mr. SHEARN. It was presented to the presidents of other railroad companies?

Mr. BAER. I think so. Of course Mr. Watkins was probably the man that did the negotiating. It was his scheme.

1162 Mr. SHEARN. Did you have any conversation with Mr. Thomas, who was then chairman of the Erie, relative to it?

Mr. BAER. I suppose I did. I do not recollect any particular conversation about it.

Mr. SHEARN. Well, there was an agreement made, was there not, by six of these companies for the guarantee of the stock and bonds of the Temple Iron Company?

Mr. BAER. There was not a general agreement made.

Mr. SHEARN. It was an agreement bearing the same date and identical in terms, except as to percentages, was it not?

Mr. BAER. Yes; but it was not a general agreement. I do not remember whether it was dated the same day, but there was an agreement reached that these different companies should guarantee the bonds in the porportions named in the guarantee, but the details of how that was brought about I do not remember.

Mr. SHEARN. But you said the arrangement of all those percentages was left to you?

Mr. BAER. Yes, sir; the division of how they should be was left to me to determine.

Mr. SHEARN. That is, it was left to you by the president of the six railroad companies?

1163 Mr. BAER. Well, I do not know.

Mr. SHEARN. How did you get your authority to fix upon those percentages?

Mr. BAER. As counsel. I was representing the Reading Company and generally I was representing everybody. Mr. Stetson and I became the general counsel of the scheme. You know how those things are carried out. When we got the scheme in there was a fee taken out for each of us out of the general fund.

Mr. SHEARN. We know how they are generally done, but that does not get on the record this particular case.

Mr. BAER. I have no recollection that it was done in any other way ——.

Mr. SHEARN. How did you get authority, for instance, to fix the percentage of the guarantee for the Erie Railroad Company?

Mr. BAER. I did not have authority, I simply made a suggestion.

Mr. SHEARN. To whom?

Mr. BAER. Probably to the Erie Railroad—probably to Mr. Thomas.

Mr. SHEARN. Have not you any recollection?

Mr. BAER. Not the slightest.

Mr. SHEARN. There is no doubt you did so?

1164 Mr. BAER. I have not the least doubt that I suggested to Mr. Thomas that the plan I had outlined was a fair way of fixing that guarantee. I have not the least doubt of it.

Mr. SHEARN. From whom did you obtain authority to fix the percentage of the Lehigh Valley Company?

Mr. BAER. I did not have any authority, but I have no doubt I talked with Mr. Walter about that. He was president at the time.

Mr. SHEARN. With whom did you talk for the Delaware, Lackawanna & Western percentage?

Mr. BAER. I do not remember. I do not think I saw anybody about that. I think somebody else did that. I do not recall. I doubt if Mr. Truesdale was president then.

Mr. SHEARN. They are interested in this guarantee to the extent of nineteen and a fraction per cent. Before they were obligated to that and before it was fixed by you, I suppose you had to be authorized to do it by some one.

Mr. BAER. I could not be authorized to do that. All I could do was to suggest that that was the proper way to do it and then the respective

boards of directors of the companies would have to give the officers authority to make the guarantee. I made this recommendation. No doubt Mr. Stetson approved of it, but which one of us saw
1165 the particular president and communicated our theories to him, I can not say.

Mr. SHEARN. You testified that the matter of the percentages was all left to you to fix on.

Mr. BAER. Only in the sense of making out a recommendation. Nobody gave me authority to fix these percentages. It was doubtless suggested that I, as counsel more familiar with the subject than the other counsel, that I should suggest a plan that would be fair between the companies, and I made that suggestion and the companies through their boards of directors, in the usual way, accepted it.

Mr. SHEARN. Well, did some officer of the Delaware, Lackawanna & Western Railroad tell you to go ahead and make up a tentative percentage for their guarantee?

Mr. BAER. I have no recollection of being in communication with any officer of the Delaware, Lackawanna & Western. I can not recall any. I do not think Mr. Truesdale was president at that time. I am quite sure he was not, and I am sure I did not see any officer of the Delaware & Lackawanna. I can not recall having any communication with anybody connected with the Delaware, Lackawanna & Western.

1166 Mr. SHEARN. Who authorized you to fix on the percentage of 17.12 per cent for the Central Railroad of New Jersey?

Mr. BAER. Nobody authorized me, as—I repeat what I said—I suggested that that should be the plan.

Mr. SHEARN. To whom did you make that suggestion?

Mr. BAER. I can not tell to whom I made it. It was probably in writing. There was certainly some conference about it, in which this plan was suggested. I probably, in the case of the Jersey Central, saw Mr. Maxwell myself. I talked with him frequently about this, and may have written him

Mr. SHEARN. In what way did you get it before the presidents of these different companies that these different percentages were deemed by you to be fair?

Mr. BAER. I can not tell. Either by writing or conversation with somebody. Mr. Stetson may have seen some of them, Mr. Watkins may have seen some of them, and Mr. Thomas may have seen some of them. I can not tell how that was done. I only know it was done. There is no question about it, is there?

Mr. SHEARN. Do you recollect now what the various percentages of the guarantees were? I was asking you that the other day when
1167 we closed. Do you recollect the Lehigh Valley?

Mr. BAER. No; I can not recollect anybody's percentage, except the percentage of the Reading, which I happened to look at. The percentage of the Reading was 29 and something. I can not recall the others.

Mr. SHEARN. Well, did not you have any meeting with these presidents at which this scheme of guarantee and scheme of purchase was discussed and finally decided upon?

Mr. BAER. I never had.

Mr. SHEARN. Do you know how it came to be decided upon—agreed to by the presidents of these six companies?

Mr. BAER. By somebody undertaking to speak for them, and, subsequently, the matter being presented to their boards and the boards approving of the act and authorizing the guarantee to be placed. How else would it be done?

Mr. SHEARN. Did you have any conference with any of those railroad presidents before you actually made the contract with Simpson & Watkins?

Mr. BAER. I did not make the original contract with Simpson & Watkins.

Mr. SHEARN. Who made it?

Mr. BAER. I do not know.

1168 M. SHEARN. Did you have any conference with them before it was made?

Mr. BAER. No; the tentative contract and understanding was reached here in New York between some people, as I understood, before I was called in, and the suggestion for us to take an interest came later. Then Mr. Stetson and I finally took up the whole subject together, acting as attorneys—as I tell you, Simpson & Watkins' attorney was a gentleman whose name I have forgotten; a lawyer in the city of Philadelphia. We drew the agreements.

Mr. SHEARN. Well, how did it come to your knowledge that the presidents of these companies approved or disapproved of the scheme for a general sales agency for the entire anthracite trade here in New York?

Mr. BAER. That came afterwards; after the company was organized. I mean after the Temple Company took over these collieries. And in the ordinary course of business the question came up before the board of directors of the Temple Company, of which I was a member. These questions were taken up, and consideration was postponed from time to time.

Mr. SHEARN. But the plan of a general sales department had been outlined to you by Simpson & Watkins before the purchase?

1169 Mr. BAER. Yes, sir. I do not know whether it was before that purchase or not. At some time a scheme was presented by Mr. Watkins. You must remember that Simpson & Watkins held a large interest in this company—they did not sell out—they held a million dollars of stock.

Mr. SHEARN. I am coming to that. I understood you to say that one of the moving impulses in the acquisition of the Simpson & Watkins collieries was a proposition, seriously entertained, for making the Temple Iron Company in reality the selling agency for these six different companies at tide water.

Mr. BAER. Well, not as broad as that; not for all these six companies.

Mr. SHEARN. Which company was left out?

Mr. BAER. No company was left in. The proposition was simply this: Mr. Watkins suggested that the expenses of the sales of coal in New York would be enormously reduced by having a common company here that would sell such coal as the companies desired to turn over to it instead of having a number of different men here as agents selling coal on commission. The commission at that time was probably ten cents a

ton, and he had a scheme that was plausible and would have worked out, of making a sort of clearing house for anybody that wanted to sell
1170 coal, and he thought the expense of the business could be reduced by making a large selling company, and that the Temple Company could make a great deal of money that way.

Mr. SHEARN. Was one of the elements considered by you in that situation that it would make it easier to maintain a uniform price at tide water?

Mr. BAER. Not at all.

Mr. SHEARN. That was not considered as an advantage?

Mr. BAER. It was not considered at all.

Mr. SHEARN. Now, then, do you know whether this plan of having the Temple Iron Company do the selling for all these railroad companies was communicated to these six different companies, or any of them, before the Simpson & Watkins collieries were actually purchased?

Mr. BAER. I do not know anything about it. I do not know with whom Mr. Watkins communicated.

Mr. SHEARN. Did not your communications with those companies lead you to believe that they were informed that that was one of the purposes?

Mr. BAER. I did not give it any consideration at the time—that is too vague to give a definite answer to. Mr. Watkins communicated it to me and I have no doubt he communicated it to others, but I have
1171 no information I can testify from.

Mr. SHEARN. How soon after the purchase of the collieries did this matter of establishing a central sales department come up for consideration in the board of directors of the Temple Iron Company?

Mr. BAER. Immediately after. Mr. Watkins had outlined his scheme in writing and presented it to me, and I held it up and held it up, because, as representing the Reading Company, I was not at all satisfied with it. I did not believe it was a good scheme and it was never adopted. When it was not adopted and the disposition was not to go into it Mr. Watkins said he did not see any reason why he should be any longer president of the Temple Iron Company, because the scope of its business was not enlarged as he wanted it enlarged. That is the whole story.

Mr. SHEARN. Or as he expected it to be enlarged?

Mr. BAER. I think so. I think he went into the arrangement expecting that the Temple Iron Company would be a big coal distributing company here in New York, and that a great deal of money would be made in that way.

Mr. SHEARN. Well, who were the directors of the Temple Iron
1172 Company at the time the vote was taken on this proposition to make it a general selling agency?

Mr. BAER. You will have to call for the minutes. I do not think it was ever voted on in the Temple Iron Company at all.

Mr. SHEARN. It came up for discussion, I understood you to say, immediately after the organization at a directors' meeting.

Mr. BAER. That I can not say. It came up for discussion, but whether it was at a directors' meeting or not I do not know. I discussed it with him. I do not recall. You can send for the minutes. They will probably disclose whether any action was taken or not. My impression is that

the corporation never took any action, because those of us active in the management of the Temple Company—a few of us, myself leading; I was vice-president of the company—did not look with favor upon the scheme. My reason was very plain. My policy has been not to have commission houses selling coal, and in the Reading the very first thing I did when I took charge was to do away with commissions wherever I could and have our own agents sell the coal, and I am glad to say I have

1173 reduced the selling expenses of the Reading Coal & Iron Company a very large sum of money, over two hundred thousand dollars a year, by doing away with those commissions. We were paying gentlemen commissions for selling coal and guaranteeing the sale, and I concluded in the ordinary organization of the coal & iron company, with agents located in New York, Boston, Chicago, Reading, Philadelphia, Baltimore, and all over the country, we could sell that coal at a less cost than it would cost us to sell it on commission, and therefore, from principle, the moment the matter came to me to pass upon one way or the other, or to advise about, I have been persistently and consistently opposed to commission houses and to selling coal on commission.

Mr. SHEARN. But with all that enormous reduction in expense, you have not succeeded in lowering the price to consumers, have you.

Mr. BAER. No; because you and your friends have succeeded in getting up the cost of wages in this country by agitation so that the profits are less now than they were.

Mr. SHEARN. I am glad you give us credit for getting up the wages.

Mr. BAER. Oh, I think you are partly entitled to it.

1174 Mr. SHEARN. Now, when this proposition was brought up before the board of directors of the Temple Iron Company, was there any discussion among the directors as to how the tonnage of the respective collieries of the Temple Iron Company should be carried by the respective companies?

Mr. BAER. How the tonnage?

Mr. SHEARN. Yes, sir; how the coal should be carried—in what proportions—and whether the coal should be diverted into any new channels or remain in the same old channels.

Mr. BAER. It was generally understood that the transportation as it existed at the time of the transfer of the collieries should not be disturbed. There was nothing said that I recall, but that was the understanding, that no new traffic arrangements should be made, and eventually the coal of the Temple Iron Company, by proper corporate action—they did make contracts——

Mr. SHEARN. Was not that one of the important reasons for some of these companies going into this scheme?

Mr. BAER. Certainly; to preserve their traffic.

Mr. SHEARN. To have it continue on the same lines as before?

Mr. BAER. Certainly.

1175 Mr. SHEARN. And it has succeeded, has it not?

Mr. BAER. Yes, sir.

Mr. SHEARN. I observe that the mortgage authorized and the bond issue authorized for the Temple Iron Company was fifteen million dollars. Did you contemplate the acquisition of the remaining independent collieries in the Lackawanna region?

Mr. BAER. That provision was put in the mortgage, because at the time there were three or four other collieries offered to us, and Mr. Watkins was very earnest in saying that Mr. Fuller's and Jermyn's collieries and several others—the names I do not recall, because I am not very familiar with that section of the State—should be bought, and it was not known what would be involved, and we therefore determined, and we do in all reorganizations—I do at least—to make the scheme large enough to cover any subsequent acquisitions we might see fit to make.

Mr. SHEARN. Have bonds enough to cover any emergency that might arise?

Mr. BAER. Yes, sir; so that we would not have to issue a
1176 second mortgage. The issue was limited to the amount required. There is a clause in the mortgage providing for the acquisition of new property; additional bonds could be issued provided the property was brought under the mortgage.

Mr. SHEARN. Was it not part of the original scheme, as outlined to you by Simpson & Watkins and those familiar with it and promoting it, that the Temple Iron Company should acquire large holdings among the independent collieries in the Lackawanna region?

Mr. BAER. No; the scheme at the time involved the purchase of Mr. Fuller's and Mr. Jermyn's collieries, and one or two others, on which they had options.

Mr. SHEARN. That would not have used up more than six or seven millions of bonds?

Mr. BAER. I do not know how much it would use up. That is all that was contemplated at that time.

Mr. SHEARN. Did you not at that time have in view the acquisition of the independent collieries in that region and paying for them by these bonds and stocks?

Mr. BAER. No; I did not. On the other hand, I was the person that prevented the acquisition of any more than the Simpson & Watkins collieries. I, representing the Reading Company—the Reading
1177 Company refused peremptorily to buy any more collieries and put in a clause—unless with the consent of the guaranteeing companies. The Fuller collieries and Jermyn collieries, and one or two others whose names I do not know, they were anxious for us to take, I thought, too dear. I recall that I worked out a basis of so much a ton for the coal in the ground, and I found that the amount asked for the other collieries exceeded by a great deal—probably one-third or one-half—the sums we were paying for the Simpson and Watkins collieries, and after the Simpson and Watkins collieries had been purchased, I advised, and earnestly advised, the executive committeee of the Reading Company to decline to go forward in the purchase of any more collieries.

Mr. SHEARN. But, as you recollect it, there were only two or three other large colliery interests intended to acquire at the time of the purchase of Simpson and Watkins.

Mr. BAER. I think the Fuller and Jermyn are the only ones. I do not recall any others.

Mr. SHEARN. Did you draw these contracts—these Temple Iron Company contracts [exhibiting contracts]?

Mr. BAER. Which contracts?

Mr. SHEARN. These contracts [exhibiting].

1178 Mr. BAER. Show them to me. Do not ask me without showing them to me.

(The contracts were handed to witness.)

Mr. BAER (after examining contracts). I do not think I did. I probably revised them. These are copies of what you got from the guarantee company?

Mr. SHEARN. Yes, sir.

Mr. BAER. Those contracts were drawn in Mr. Stetson's office. I probably dictated some part of it, and he dictated some part of it.

Mr. SHEARN. You are familiar with their terms, are you not?

Mr. BAER. I was at the time, and approved of them at the time.

Mr. SHEARN. Will you please look them over and state whether they are not copies of the contracts?

Mr. BAER. No; I will not. That is asking a gentleman to do something he can not do. I remember a judge of a court being called upon to testify to a paper, and when he went to testify I called his attention to something in connection with it, and he thanked me and said he had forgotten what it contained, and that he might have said something that was not true. If you ask me to say from recollection what is in a paper, it is not fair.

1179 Mr. SHEARN. You recollect the leading and essential features of these contracts, do you not?

Mr. BAER. I will not testify about any written paper by recollection. I decline to do that.

Mr. SHEARN. Do you recollect that the preliminary contract between Simpson & Watkins and the Guarantee Trust Company, dated February 27, 1899, provided for the transfer to Simpson & Watkins by the trust company of trustees' certificates for the capital stock of the Temple Iron Company to the amount of $2,250,000?

Mr. BAER. I decline to answer that, because the paper is in existence and can be produced.

Mr. SHEARN. Will you produce it?

Mr. BAER. I will not.

Mr. CAMPBELL. I object. The grounds for the presentation of this evidence has been presented and notification made to the custodian, who, for the reasons set forth in the record, has declined to produce it. I object to undertaking to prove the contents of the document in this way.

Mr. SHEARN. This contract, dated February 27, 1899, between the Temple Iron Company and the Guarantee Trust Company of

1180 New York and the Lehigh Valley, appears to have been executed by you as president of the Temple Iron Company. You have custody of that contract, have you not—the Temple Iron Company's original copy?

Mr. BAER. I have not. I suppose it is in the hands of the treasurer.

Mr. SHEARN. It is under your control?

Mr. BAER. Yes, sir; it is under my control if it is in the files of the Temple Iron Company.

Mr. SHEARN. You could produce it if you would?

Mr. BAER. I won't produce it unless I am ordered by the court to produce it.

Mr. SHEARN. You could produce it if you wished?
Mr. BAER. I will not produce it unless ordered by the court.
Mr. SHEARN. Could you produce it if you would?
Mr. BAER. I will not make any further answer to that question.
Mr. SHEARN. I ask the court to direct him to answer the question.
The CHAIRMAN. The contract is not here.
1181 Mr. SHEARN. A copy of it is here. This court has power to order the production before it of any documents that it deems are important for the determination of the issues, and under your discretion so to do I ask you to direct the witness to produce the contract.
The CHAIRMAN. That is precisely the question we have had up before.
Mr. SHEARN. It is in a different shape now. The trust company came in and objected, because it was a trust company and there were trust relations, confidential relations. I should be permitted in the first place to ask this question of Mr. Baer to show that if he desired to do so he could produce it, and then ask your honors to direct the witness to produce it, and that is the purport of that question. I submit it is a proper one.
The CHAIRMAN. He does not put his refusal on the ground of inability.
Mr. SHEARN. I have not asked about his grounds. I asked if he could do it.
Mr. BAER. I will state to the Commission that if it was on file or in the custody of the company and a proper order was made by the court I would produce it. I do not know that it is there. I have not
1182 the physical custody of these papers, but if it is necessary to produce that paper I can make an order requiring my subordinate officer to do it.
Mr. SHEARN. This Commission has ordered the company to produce it.
Mr. BAER. It has not ordered me.
Mr. SHEARN. I want to know if you could produce it if you would?
Mr. BAER. I decline to make any other answer.
Mr. SHEARN. I ask the court to direct the witness to answer the question.
The CHAIRMAN. The contract is not here and he has not been subpœnaed to produce it.
Mr. SHEARN. But I am going to ask him, if he answers this question in the affirmative, as he must—I am going to ask you to direct him to produce it.
The CHAIRMAN. He has said enough to satisfy me that he could produce it if he were willing to do so.
Mr. SHEARN. Well, he has not satisfied me. It seems to me his manner indicates very clearly that he will not.
1183 Mr. BUDD. If the court please, this is a fundamental and preliminary question. Certainly, if he says he can not produce it, no other proceeding can be taken. If he says he can, we will ask for an order of this court directing him to produce it. It is not a laughing matter, although the witness seems to think so.
Mr. CAMPBELL. The circumstance is that the gentleman has testified positively that he is president of the Temple Iron Company, and that

the officers of the Temple Iron Co. have presumably a copy of that paper on file. That is a preliminary enquiry——

Mr. SHEARN. It does not answer from my point of view. Perhaps it does for Judge Campbell.

The CHAIRMAN. I do not know what more the witness could say. He is not an officer who ordinarily would have the contract in his actual custody. He says he is president of the company and could direct his subordinate officer, who may have it, to give it to him. To be perfectly clear, Mr. Baer could produce the contract.

Mr. SHEARN. Why should he not answer the question?

Mr. BAER. Because you asked if I could produce it, and I had
1184 explained the way I could. I do not know whether it is on the files. I do not know whether the treasurer has it, or who has it, but if it is in the custody of any subordinate officer, and I am ordered by a competent court or this tribunal to produce it, I will produce it if it is in our office.

Mr. SHEARN. I do not find any fault with that if you will stand by it and will produce it when ordered by this Commission. Is there any doubt in your mind as to this contract being in the files of the Temple Iron Company?

Mr. BAER. I have no doubt in the world it is in the custody of some officer and in the files of the Temple Iron Company.

Mr. SHEARN. Now, I ask the court to direct Mr. Baer to produce the agreement dated February 27, 1899, between the Temple Iron Company and the Guarantee Trust Company, and the Reading Company, and between the same companies and the Lehigh Valley Railroad Company, and between the same companies and the Delaware, Lackawanna & Western, and between the same companies and the Lehigh Valley, the New York, Susquehanna & Western, and the Reading Company.

1185 Mr. CAMPBELL. And I object for the reasons set forth in the objections at the time the secretary of the Guarantee Trust Company was examined.

Mr. ROSS. On behalf of the Delaware, Lackawanna & Western, I also object for the reasons before stated.

Mr. BROWNELL. I enter the same objection on behalf of the Erie.

The CHAIRMAN. We are constrained to overrule the objections.

Mr. CAMPBELL. And in accordance with our previous action, I advise witness to decline to produce the papers until the question has been determined by the court.

Mr. SHEARN. He has already said he would comply with the order of this Commission.

Mr. ROSS. On behalf of the Delaware, Lackawanna & Western I desire to request the witness to refuse to produce the documents referred to.

Mr. BAER. As instructed by counsel, I decline to produce them, waiving all question of the fact that they are not here, or anything of that kind.

Mr. SHEARN. What did you mean by telling the Commission you would produce them if ordered to do so by the Commission?

Mr. BAER. Personally I am here as a witness. I am not try-
1186 ing this case, and when counsel who represent me or represent the companies I represent and other parties in the case, instruct me as witness not to produce the paper, I am bound to obey instructions, or

else go down and take charge of the trial of the case. I can not be a party, a witness, and counsel altogether. I am compelled to be reasonable and take the advice of counsel, upon whom the responsibility rests, and you must not assume that because I was a lawyer that I dare override my counsel and the counsel of the other people here.

Mr. SHEARN. They are acting under your instructions, are they not?

Mr. BAER. They are representing me just as counsel represent people. They are not representing me personally. They are the attorneys for the different defendants you have summoned here before the court, and they are here charged with the responsibility of trying this case. If they blunder, I suppose my companies will be ultimately responsible for it, but I will not be personally responsible.

1187 Mr. SHEARN. Do you recollect that one of the provisions of the contract, dated the 10th of April, 1899, between the Guaranty Trust Company of New York and the Reading Company and the Erie Railway Company and the New York, Susquehanna & Western, the Central Railroad Company of New Jersey, and the D. L. & W., provided for the payment by those companies to the Guaranty Trust Company of a sum equal to twelve and a half cents upon and in respect of every ton of coal from the mines of the Temple Iron Company; is not such an agreement provided?

Mr. CAMPBELL. I object to that.

The CHAIRMAN. The objection is sustained.

Mr. SHEARN. Do you recollect that one of the provisions of that same set of contracts, dated April 10th, 1899, provided that in the event of failure of the railroad companies to carry out this agreement they would pay twelve and a half cents a ton upon and in respect of every ton of coal from the mines of the Temple Iron Company acquired under the terms of the agreement between Simpson & Watkins and the Iron Company, dated the 27th of February, 1899, and any additional mines hereafter acquired by the iron company in conformity with the agree-

1188 ment of the same date between said iron company, the trust company, and the railway company, transported over the lines of the railway company as the initial line, or any other sum it is liable to pay under the agreement of February 27th, 1899, after the same has been demanded by the Trust Company, then in addition to the remedies provided in this agreement the trust company may notify and require the Temple Iron Company thereunder to ship its coal over the lines of such of the guarantors as have not made default?

Mr. CAMPBELL. I object to that also.

The CHAIRMAN. The objection is sustained.

Com'r PROUTY. Mr. Shearn, they have declined to produce that paper and as to what is done under that contract; you ought not to try to show the contents of the paper which the witness signed.

Mr. SHEARN. Has the Reading Company, since April 10, 1899, paid the Temple Iron Company twelve and a half cents a ton on every ton of coal transported over its line?

Mr. CAMPBELL. I object to that question as immaterial, as having no bearing upon the questions pending here before your honors under the act to regulate commerce. It is immaterial for all the reasons

1189 hitherto set forth regarding the private business relations of these companies which are buying, shipping, and mining coal.

The CHAIRMAN. We overrule those objections and the witness may answer.

Mr. BAER. No; they didn't transport any.

Mr. SHEARN. Has the Central Railroad of New Jersey paid to the Guaranty Trust Company of New York the sum of twelve and a half cents a ton upon the production of the mines of the Temple Iron Company transported over its line as the initial line since that date?

Mr. CAMPBELL. The same objection.

The CHAIRMAN. And the same ruling.

Mr. BAER. Allow me to answer those questions generally. So far as I know as president of the Temple Iron Company all the guarantee companies have paid all sums which the Guaranty Trust Company has required them to pay under the form of the guarantee and a number of payments have been made, the amount of which and the details of which I do not recollect; but the fact is generally that they have recognized the obligation of their guarantee and have paid in accordance therewith.

Does that answer your question?

1190 Mr. SHEARN. It does not, because we have not the contract in evidence now. Now, I ask the stenographer to read the question to you, and ask you to answer it.

Mr. BAER. I ask the Commission whether I have not answered the question in substance.

Mr. SHEARN. Has the Central Railroad Company of New Jersey, since April 10th, 1899, paid to the Guaranty Trust Company the sum of twelve and a half cents a ton on every ton of coal from the mines of the Temple Iron Company carried over the Central Railroad Company of New Jersey as the initial line?

Mr. CAMPBELL. The same objection.

Mr. BAER. I answer that, No; that all that the Central Railroad Company of New Jersey has paid has been on the deficit in the amount required to be paid, the interest, and the dividends which the Guaranty Company, trustee, has asked them to pay, but the amount and how much it was I can not tell without reference to the books.

Mr. SHEARN. Does it amount to as much as twelve and a half cents on every ton mined from the mines of that company and transported over that line as the initial line?

1191 Mr. BAER. Oh, no. I will explain that these are only advances made to pay interest and dividends arising under the exceptional conditions of strikes; that the Temple Company in my judgment is entirely solvent and can repay all sums advanced to it by the guarantors, beyond question.

Mr. SHEARN. Has the Central Railroad Company of New Jersey since April, 1899, been penalized by having any of the traffic from the lines of the Temple Iron Company ordinarily passing over its lines withdrawn from it?

Mr. BAER. That I can not tell.

Mr. SHEARN. You would know if it was a fact, would you not?

Mr. BAER. We are not the initial line there. I can't tell you that. You will have to go to the traffic department, I suppose. I can not tell. I would say no, when you used the word "penalized." I do not know how much of the traffic—what I mean is this: I can not now say whether

the Central Railroad of New Jersey enjoys exactly the same tonnage from the collieries that it did in 1899, nor do I recall how much of that tonnage it does receive, because my present recollection is that the Central of New Jersey is not the initial line; that it comes to it through other lines. The traffic department could answer that.

1192 Mr. SHEARN. As president of the Temple Iron Co. and a member of its board of directors, do you know whether any of the railroad companies who are parties to the Temple Iron Co. agreement have had any part of the traffic ordinarily incident to their lines as initial lines withdrawn from them by reason of their offering to carry out any of the provisions of the Temple Iron Company contracts?

Mr. BAER. Well, in general I would say they have not; but there is a dispute about the taking of some coal from one of the collieries and there was litigation with the Ontario & Western. The Ontario & Western claimed to have a contract by which they were entitled to the coal from one of the collieries, or to a part of it, and under the ruling of our Supreme Court in the Bald Eagle Valley vs. The Littany Valley, they held that the railroads had a right to make special contracts with owners of mines and factories along their line to secure traffic and that an injunction would lie to prevent the diversion of that traffic to another new railroad about to be built. I advised the adjustment of that litigation about a year after the Temple Company was organized, and urged an adjustment by which the Ontario & Western got the traffic. Is that right?

1193 Mr. KERR. Yes, sir.

Mr. BAER. We had filed a bill and had the usual fight about it and the matter came to me. I looked up the case and I concluded that it had a right to that traffic and it was given to the Ontario & Western.

Mr. SHEARN. Did that come up before the board of directors of the Temple Iron Company?

Mr. BAER. No; I do not recall that. Mr. Watkins was president at that time and they got into the litigation with him, and when I came to look into the question preliminary injunction had been granted against us, and I advised the adjustment with the Ontario & Western, and I think I personally took it up with Mr. Fowler and Mr. Kerr, and no doubt reported it to the board and had its approval.

Mr. SHEARN. Is that the only case you recollect since April 10, 1899, where, by virtue of a vote of the board of directors or any action authorized by the board of directors of the Temple Iron Company, tonnage has been diverted from any of the lines of railroad party to this Temple Iron Company agreement by reason of failure to carry out any of the terms of the Temple Iron Company agreements?

Mr. BAER. I don't know anything of that kind; no.

1194 Mr. SHEARN. You don't know of such case?

Mr. BAER. No, sir; I do not know of any such.

Mr. SHEARN. You would know if there were such, would you not?

Mr. BAER. I think I would.

Mr. SHEARN. Then there are none.

Mr. BAER. I have not heard of them.

Mr. SHEARN. Who owns the capital stock of the Temple Iron Company?

The CHAIRMAN. I don't want to misunderstand any of this. The contract is not in. You have a copy of it. As I understand as it has been described for failure to respond when called upon to do so, the traffic might be diverted. The real question is, Did any of them fail to respond?

Mr. BAER. Everybody has carried out in good faith their guarantee.

Mr. SHEARN. Who owns the stock of the Temple Iron Company?

Mr. BAER. The stock of the Temple Iron Co.?

Mr. SHEARN. The capital stock, the share stock.

Mr. BAER. The capital stock of the Temple Iron Co. is scattered far and wide over the United States.

1195 Mr. SHEARN. Is not all the capital stock of the Temple Iron Company owned by the Guaranty Trust Co. of New York as trustee?

Mr. BAER. The stock is pooled and the Guaranty Trust Co. issues certificates of stock as we do in the Reading Company. The stock of the Temple Company was deposited with the Guaranty Trust Co. of New York under a voting trust, and that issued voting trust certificates, and those certificates are scattered far and wide over this country. A great many of them are held in New England. The last time I looked at the books there were three or four hundred stockholders; that is, holders of voting trust certificates.

Mr. SHEARN. Certificates of beneficial interest?

Mr. BAER. Yes; you understand what I mean—the kind of thing the Reading issues, or a trustee issues where there is a voting trust.

Mr. SHEARN. Then the share stock of the Temple Iron Company is all held by the Guaranty Trust Co. of New York as trustee and upon that issues certificates of beneficial interest in the share stock of the Temple Iron Co.

Mr. BAER. Yes, sir.

1196 Mr. SHEARN. Now, who votes the stock of the Temple Iron Company? The Guaranty Trust Co.?

Mr. BAER. The Guaranty Trust Company; they give a proxy. Since I am president they give me a proxy to vote their stock.

Com'r PROUTY. Are they subject to any control in that matter?

Mr. BAER. No, sir.

Mr. SHEARN. The Guaranty Trust Company have the absolute right to vote the stock?

Mr. BAER. Yes, sir.

Mr. SHEARN. Do you know who instructs them how they shall vote the stock? Does not that come from the railroad companies that are parties to this guarantee agreement?

Mr. BAER. It does not.

Mr. SHEARN. Who are the directors of the Temple Iron Company?

Mr. BAER. They are Mr. Smith, Mr. Brogan, Mr. Geo. B. Connor, Mr. Joseph S. Harris, Mr. Truesdell, Mr. E. B. Thomas, Mr. Underwood, and myself, I think.

1197 Mr. CAMPBELL. There is no reason for putting this in the record. It is all in the examination of Mr. Baer, last Friday, I think.

Mr. SHEARN. Was Mr. R. M. Olyphant, president of the Delaware & Western, a director in 1902?

Mr. BAER. Mr. Olyphant was a director for a short time.

Mr. SHEARN. Do you recollect when he became a director?

Mr. BAER. No; I do not. I recollect asking him to come into the board, and he was in a short time and then resigned.

Mr. SHEARN. Do you recollect when he resigned?

Mr. BAER. I do not; probably a year ago.

Mr. SHEARN. Why did you ask him to become a director?

Mr. BAER. I wanted his advice, and the Delaware & Hudson got some traffic from these mines; they got part of the transportation, directly or indirectly, and I wanted his advice in the management of the company. He is the most experienced coal man in point of years, and I think in ability, in the city of New York.

Mr. SHEARN. Was Mr. Irving A. Stearns, the president of the
1198 Delaware, Susquehanna & Schuylkill, member of the board of directors?

Mr. BAER. Yes, sir; Stearns was a director. I am not sure he is a director now. He was a director. We have had an election lately—in March of this year—and I sent a proxy up, and I think Stearns is a director yet. He was a director.

Mr. SHEARN. Did he become a director at your request also?

Mr. BAER. I think he did originally.

Mr. SHEARN. For the same reason that Mr. Olyphant was asked to become a director?

Mr. BAER. Mr. Stearns is a very competent mining engineer and mine manager.

Mr. SHEARN. Where are the meetings of the board of directors of the Temple Iron Co. held?

Mr. BAER. In Reading, and sometimes in New York and sometimes in Philadelphia. The general office is in Re[illegible]ing.

Mr. SHEARN. Are they not most often held in the city of New York?

Mr. BAER. I suppose most of the time they are held here.

1199 Mr. SHEARN. How often do the board of directors meet?

Mr. BAER. Of the Temple Iron Co.?

Mr. SHEARN. Yes, sir.

Mr. BAER. Well, theoretically once a month, but actually about once in three months, I should say.

Mr. SHEARN. They met oftener than that during the strike, didn't they?

Mr. BAER. No; I suppose we met every two months during the strike, when something had to be done by the Temple Company officially in connection with some matter pertaining to the strike. You can get the months.

Mr. SHEARN. Does the board of directors of the Temple Iron Company control and direct the policy of the subsidiary companies of the Temple Iron Co.?

Mr. BAER. Well, there is not much direction about it. We get competent managers and officers and put them in charge of the mines up at Scranton, and the only policy about it is to mine all the coal they can and as cheaply as they can.

Mr. SHEARN. When it has coal for sale, who decides what the coal shall be sold for and how much shall be mined?

1200 Mr. BAER. We sell by contract.

Mr. SHEARN. Does the Temple Iron Company's output—is it sold under contracts providing for payment on the basis of 65 per cent of the tide water price?

Mr. BAER. I won't tell you what the contracts contain. I will say that the Temple Iron Co. sells its coal to coal companies and is not a retailer of coal in the market.

Mr. SHEARN. Is the business of the Temple Iron Co. controlled by and managed by the board of directors of the Temple Iron Co.?

Mr. BAER. Why, yes; certainly.

Mr. SHEARN. Then it is not managed in this wise, is it, that all of the coal mined by the several subsidiary corporporations of the Temple Iron Company is under the direct management and control of the board of directors of the said corporations severally?

Mr. BAER. Yes, sir; that is right.

Mr. SHEARN. That is what I want to know—whether each of the separate companies or collieries included in the Temple Iron Company's scheme are controlled by separate boards of directors, or by the general board of directors of the Temple Iron Company?

Mr. BAER. They have separate boards of directors. They are

1201 managed all from Scranton. They have their boards and some of us are in them. I do not know who the directors of those subsidiary companies are. I can get them.

Mr. SHEARN. As a matter of fact, the policy of those companies is really controlled and directed by the board of directors of the Temple Iron Co.?

Mr. BAER. Unquestionably; there is no question about that.

Mr. SHEARN. Where in the city of New York does the board of directors of the Temple Iron Company have its meetings?

Mr. BAER. At my office—the president's office of the Central of New Jersey Railroad generally. Sometimes they meet at other places, but very rarely. As a rule there is where we meet.

Mr. SHEARN. You had a meeting in March of this year, did you not?

Mr. BAER. Yes, sir; we had a meeting to organize the board after the stockholders' meeting.

Mr. SHEARN. The last meeting of the board of directors of the Temple Iron Company preceded, did it not, the issuing of the Reading's price circular for April, 1903?

Mr. BAER. Indeed I don't know.

1202 Mr. SHEARN. It was prior to April 1st, 1903, that you had the last meeting, was it not?

Mr. BAER. I don't know when it was.

Mr. SHEARN. I understood you to say there was a meeting in March.

Mr. BAER. I probably did say so. Let me get my diary and see. [After consulting diary.] We organized the 24th day of March—Tuesday, the 24th day of March, in New York, Temple Iron Company meeting. That is the day.

Mr. SHEARN. At that meeting do you recollect who was present?

Mr. BAER. No.

Mr. SHEARN. Well, was Mr. Thomas present?

Mr. BAER. When you say do I recollect who was present, I don't mean that I can not recollect some who were present, and I will proceed to name them; I think Mr. Thomas was there and Mr. Truesdell was there, Mr. Harris was there, and myself; I think they were all.

Mr. SHEARN. What discussion took place as to what price should be charged for coal at tide water?

Mr. BAER. None whatever.

Mr. SHEARN. Was that not referred to?

1203 Mr. BAER. It never was referred to and never is referred to in the Temple Iron Company meetings.

Mr. SHEARN. After the adjournment of the Temple Iron Company meeting, while you were all there, what was said about the prices to be charged?

Mr. BAER. Nothing; not a word was said about the price of coal after the adjournment.

Mr. SHEARN. Or before the meeting took place?

Mr. BAER. Nor before the meeting took place.

Mr. SHEARN. What is there about the business of the Temple Iron Company that requires the attendance of the presidents of these several railroads at your office for periods of two and three hours at each meeting?

Mr. BAER. There is nothing in the business of the Temple Iron Co. that requires them and there are no such meetings at my office of the Temple Iron Company. The Commission will understand that for a period of time during this strike we have had frequent conferences in relation to these momentous questions that we all had under consideration, and it was customary for the coal presidents here in New York to come to my office on Tuesday by invitation to lunch with me, and we have there discussed all the questions bearing upon the strike and

1204 the question of what we were to do to end it, and everything in relation to it. That has been going on for a year, and I have no doubt that fact has led to the belief that they were meetings of the Temple Iron Company. Sometimes there were meetings of the Temple Iron Company to transact the ordinary business of the Temple Iron Company. It has a large business and it requires a great deal of attention. I get reports of the corporations and have to submit them. They are the ordinary and regular meetings of a corporation engaged in business, and since I have been president of the railroad, because the strike began immediately afterwards, there have been numerous conferences in my office at times sometimes—generally at my office. We have also held them in Mr. Thomas's office. Nearly every gentleman has furnished a lunch at some time where we got together and discussed these questions in which we all had a common interest.

Mr. SHEARN. Questions about the strike?

Mr. BAER. Questions about the strike, which were the only questions which have really occupied the attention of the coal presidents for a very long while.

Mr. SHEARN. Don't you get together and discuss the question of output and price?

1205 Mr. BAER. No; not output or price. I have never been at a meeting where the question of output or price was discussed. I have met Mr. Thomas and Mr. Walter occasionally and I have asked

them about the trade and what he thought the output of a given month would be, and what the market would probably take in a given month; but there never has been a meeting since I have been president of the Reading or Central of New Jersey between the presidents of the railroads or coal companies when the question of output or price has been discussed in the sense of wanting to fix a price. They have criticised me casually at times about the price I fixed and there has been talk about what the price of the coal was in the market. What I mean by that is, casual talk of men meeting together and discussing a common business, but there was no agreement or no arrangement and no conclusion or anything which can be directly or indirectly construed to be a fixing of price or fixing of output during my administration.

Mr. SHEARN. Where did these casual meetings take place?

Mr. BAER. Oh, well, they take place sometimes down at the Lawyers' Club. They have a fascinating place down here—a downtown
1206 club. We meet very frequently; probably every two or three weeks two or more of us meet in one way or another. Do you want to know what we dine on, too?

Mr. SHEARN. I guess you dine on the fat of the land, probably. I won't go into details, but are those the meetings, do you know, that are spoken of in the answer of the Philadelphia & Reading Coal & Iron Company submitted to the Attorney-General?

Mr. BAER. Show me the answer and I will see what it is.

Mr. SHEARN (continuing). Wherein they are referred to as meetings for exchanging and considering of statistical information and data as to the state of supply and available demands of future markets in order that measures may be taken to supply their requirements.

Mr. BAER. We often discuss that. We have had discussions as to what the future of the anthracite market would be. Some of us supposed that when the strike was over that the demand for anthracite coal would be very great and that the capacity of the mines would not be equal to producing, and all that sort of conversation. That is natural to men. Lawyers, when they get together, discuss cases, don't they?

1207 Mr. CAMPBELL. I hope the witness will insist on having the paper which the gentleman is examining him from. It refers to a meeting which took place in times past of the coal sales agents and has no relation to what he is examining the witness about.

Mr. BAER. I have no objection to saying——

Mr. SHEARN. To saying what?

Mr. BAER. To saying that when I meet Mr. Thomas or Mr. Truesdale at times I may talk about coal to them, or the amount of business he is doing, or I may talk about many other matters; but what I do say emphatically is that there has been no pool, combination, or agreement between any of the coal presidents or the railroad presidents connected with the coal companies since I am president of the Philadelphia & Reading Railroad Company, either relating to output or to price.

Mr. SHEARN. In other words, you have never gotten together at any time and tried to put up the price of coal?

Mr. BAER. That is it exactly.

Mr. SHEARN. Do you recollect having an interview with Mr. Carroll D. Wright in November, 1902?

1208 Mr. BAER. Yes, sir.

Mr. SHEARN. Will you look at the marked page 1204 of the Bulletin of the Department of Labor that I hand you [handing to witness]?

Mr. BAER. What do you want me to look at?

Mr. SHEARN. Where it is marked in the margin.

Mr. BAER (after reading marked portion of page.) That is all true, sir.

Mr. SHEARN. You said that to Mr. Wright, did you?

Mr. BAER. Yes, sir.

Mr. SHEARN. I will read it in evidence.

Mr. GOWEN. I object to the extract; let it all go in. I object to a portion of the interview going in.

The CHAIRMAN. Your question is as to some interview between Mr. Baer and Mr. Carroll D. Wright?

Mr. SHEARN. Yes, sir; when he made a statement to Mr. Wright.

The CHAIRMAN. You produce a statement which he identifies, and now you offer that statement?

Mr. GOWEN. He offers a portion only.

Mr. SHEARN. I am going to read a certain part of it and ask that it go in evidence.

Mr. GOWEN. We want all upon that subject, if this Commission please.

1209 The CHAIRMAN. Of course the other side can put the rest of it in.

Mr. SHEARN. Did you say as follows, referring to the preceding strike, that:

"Shortly after this strike was inaugurated Senator Hanna met a number of gentlemen and insisted that if the strike were not settled it would extend to Ohio, Indiana, and Illinois, and the election of Mr. McKinley and Mr. Roosevelt would be endangered. He insisted that he was authorized to settle the strike, through Mr. Mitchell, if the operators would agree to a ten per cent advance in wages. After a great deal of pressure had been brought to bear upon the presidents of the coal companies and postive assurances were given that the situation was really dangerous, President McKinley, sending to me personally a gentleman to assure me that Ohio and Indiana were in danger unless some adjustment was made, we agreed to put up a notice, which was prepared, as we understood, at Indianapolis and furnished by the United Mine Workers. The private operators absolutely refused to join in this advance, and instead of the strike being ended, as promised, it continued on for some time, and it became necessary, in order to relieve the situation, to call a meeting of the private operators with the presidents of the coal
1210 companies and to agree with them that if they would put up notices to pay 10 per cent increase we would meet a committee which they should appoint and endeavor to increase, if possible, the price of coal. They agreed to this, a committee was appointed by the private operators, and we sat two or three days a month for three months to reach an agreement with them. That agreement involved a heavy compensation to the private operators from the coal companies. The coal companies had agreed to change the basis of coal purchased from the private

operators from a basis of 40 per cent and 60 per cent to a basis of 35 per cent and 65 per cent. In other words, we had to decrease 5 per cent and they increased 5 per cent."

You stated that to Mr. Wright?

Mr. BAER. I did, I assume; it sounds all right—if you have read it correctly.

Mr. SHEARN. That is the fact, is it not, anyway?

Mr. BAER. Yes, sir; it is the fact.

Mr. SHEARN. Now, the increase of price that you agreed to try to bring about between you was, I suppose, the price of coal to the independent mine owner, not to the price to the consumer? What price were you referring to that you would attempt to put up—the retail price of coal or the price to the operator?

1211 Mr. BAER. It says exactly that it was to the independent operators who were selling their coal. Instead of selling it on the basis of 60 per cent f. o. b. New York, they were to get 65 per cent.

Mr. SHEARN. So that referred, of course, to the price of their coal sold to your coal companies?

Mr. BAER. Yes, sir.

Mr. SHEARN. Where were those conferences held?

Mr. BAER. In Philadelphia.

Mr. SHEARN. Do you recollect who the committee representing the operators consisted of?

Mr. BAER. Why, Congressman Connell——

Mr. SHEARN. Mr. Kemmerer was——

Mr. BAER. Just wait until I get the whole thing back in my mind—Doctor Howe and Mr. Kemmerer. I think they were the only three.

Mr. SHEARN. You had several conferences at which they made representations to you, and there was much discussion, pro and con?

Mr. BAER. Oh, yes.

Mr. SHEARN. Was Mr. Truesdale present at the conferences?

Mr. BAER. Well, at one or two he was, I think.

Mr. SHEARN. Was Mr. Garrett present?

Mr. BAER. Mr. Garrett was present at most of them.

1212 Mr. SHEARN. Who else was present from the railroad companies or from the coal companies?

Mr. BAER. Why, Mr. Cumming.

Mr. SHEARN. Of the Erie?

Mr. BAER. Of the Erie. Mr. Cumming, of the Erie, Mr. Garrett, and myself were the three there most of the time, and at times I recall Truesdale being there, once or twice.

Mr. SHEARN. You came to an agreement, didn't you?

Mr. BAER. Came to an agreement?

Mr. SHEARN. Yes, sir.

Mr. BAER. No; we did not come to an agreement. We suggested a plan to the coal companies and the operators based upon the 65 per cent contract, and suggested—we outlined a plan and suggested that the companies on that basis, the coal companies, should make contracts with their private operators or such of them as were willing to enter into contracts.

Mr. SHEARN. You had a draft form of agreement there, didn't you?

Mr. BAER. The form of agreement was revised and revised at every meeting.

1213 Mr. SHEARN. And finally you and the committee came to a tentative agreement upon the cents of the proposed contract, didn't you, as stated in this report I have read to you?

Mr. BAER. An agreement was reached by the committee by we persons agreeing to recommend to the private operators and the coal companies the making of contracts on this basis. There was no agreement about it. We had no power to make an agreement.

Mr. SHEARN. When you got through with your last conference the gentlemen representing the coal companies had come to an understanding as to what form of contract you were willing to enter into, had you not?

Mr. BAER. No; there was no agreement about it, one way or another. The committee was acting, representing all parties, and we recommended, as I recall it now, to the coal companies and to the individual operators the making of contracts on that basis. The form was a general form that would not suit all conditions, you see, and it was simply the basis of a contract in its general terms as to the 65 per cent and as to the terms of payment, and the great fight we had, as I recall it, was on the

1214 proportion of *of* coal and on the sizes of coal. Some of the private operators insisted upon changing the sizes of coal, and a good many of them wrote long letters to us insisting that what we called the inspection of the coal, by which the slate and the foreign matter is eliminated, was too rigid, and wanting an allowance of a larger percentage of slate—details of that kind.

Mr. SHEARN. The essential thing that was under consideration was the increase of the price from 60 to 65 per cent of the tide-water price on prepared sizes?

Mr. BAER. You may say that was the essential—that the price is the essential thing, but the real essential thing in fixing that basis was to have the contract clearly define the character of the coal; anthracite coal can be mined so full of foreign matter and slate that its merchantable quality very much depreciates, and the standard we had established as the basis of purchase was the source of long and protracted talk; it took up five times as much time as anything else, as you will see by the details in the contract. The object of the coal companies, being the purchasing company, was to get clean merchantable coal, and also to get a clear definition of the sizes of the coal.

1215 Mr. SHEARN. And the object of the operator was to get an increased price?

Mr. BAER. To get the increased price and have as low an inspection as possible, which affected the quality of the coal.

Mr. SHEARN. Before these conferences had terminated you gentlemen representing the railroads had——

Mr. BAER. Not representing the railroads.

Mr. SHEARN. ——representing the coal companies had come to the conclusion that you were willing to pay 65 per cent of the tide-water price?

Mr. BAER. Yes, sir.

Mr. SHEARN. And you so announced that to the committee, did you not?

Mr. BAER. Yes, sir.

Mr. SHEARN. Does that 65 per cent mean 65 per cent of the price of each man's coal at tide water or 65 per cent of the general price for all coal of the same grade sold during a given month at tide water?

Mr. BAER. I will have to refer you to the contract. I really can not carry those details in my mind. There is a specific provision in the contract relating to that, I am sure, but I can not recall it from recollection.

Com'r PROUTY. Do you know, as a matter of fact, how that is got at?

1216 Mr. BAER. My recollection of that is this: That the f. o. b. price of white-ash coal—you see there are so many kinds of coal that we have to take a standard coal. It is taken in New York—the f. o. b. price in New York—and all the coal of that particular region—the white-ash coal—is taken to make the common basis of payment. For example, the Schuylkill region, or the shippers from the Schuylkill region, bring white ash f. o. b. New York. That has to be the basis of payment, say in the Wyoming region, of what other coals bring. These coals all differ in quality.

Com'r PROUTY. You put all on the same basis of the same quality of coal?

Mr. BAER. Yes, sir; to get at a common basis for the same quality coal, and that is done by a statistician, Mr. Ruley, who gets the prices, and the operators have a right to call on the coal companies to send in a statement of the prices at which they have sold all this coal, and then he makes up a statement and ascertains the average price. We never look beyond that. We think he is perfectly competent.

Com'r PROUTY. You say the coal companies send to him a detailed statement of coal and the prices on what they have sold?

Mr. BAER. Yes, sir.

1217 Mr. SHEARN. The various companies employ Mr. Ruley to get these figures up for them?

Mr. BAER. Mr. Ruley is a statistician and gets up all kinds of figures for us in relation to the coal trade. We report to him everything about the business, where we sell the coal and all that, so that he prepares for us statements—how much coal has been sold in Brooklyn and who sold it, and what prices it brought, and he gives monthly statements, statements of how much coal each of the companies transported to market.

The CHAIRMAN. And how much each one sold of a given grade?

Mr. BAER. Yes, sir; all different grades.

The CHAIRMAN. Is that the basis on which the settlement is made?

Mr. BAER. No; the payment is made on domestic—there are different kinds. Sixty-five per cent is not the whole of the story. That is on domestic sizes.

Mr. SHEARN. Prepared sizes?

Mr. BAER. The other sizes call for a different payment, which I do not remember; that differs. The contracts are not uniform on that.

Mr. SHEARN. But as to the 65 per cent payment?

1218 Mr. BAER. As to the 65 per cent, on what we call prepared sizes, I think the contracts are uniform on that, but they are not as to the smaller sizes of coal.

Mr. SHEARN. We are speaking of prepared sizes. I should come to the conclusion, from what you have said, that the statement is made for prepared sizes on 65 per cent of the general average price prevailing during the month on the sales made, not 65 per cent of the price that each individual operator's coal is actually sold for.

Mr. BAER. The general market price for that particular kind of coal at a particular market, as I recollect it.

Mr. SHEARN. You are unable to differentiate between the individual miner's coal and your own coal? It all goes into a common supply, does it not, and is sold?

Mr. BAER. That is the reason of it. The advantage we have—the great advantage to us—is that we can take the coal from all these private operators and have it consigned with our coal. It saves us a great deal of cost and trouble in keeping the coal separate and selling on each man's account. It becomes a part of our coal that we purchase, and we give him the average price we obtain for that.

1219 The CHAIRMAN. That seems to dispose of the question, Mr. Shearn.

Mr. SHEARN. After that report was made, how generally did the operators along the line of the Reading and the Central Railroad Company of New Jersey enter into those contracts with those companies?

Mr. BAER. Well, they were very slow. Some of them entered into the contracts and some of them have not entered into them. There were applications only the other day. Some staid out and some came in, but some came in in the spring and others staid out for six months and a year, and quite a number are out yet. It didn't meet with general favor. The majority accepted the contract, but a great many did not.

Mr. SHEARN. Have you any idea as to the output of the mines that accepted the contract on the lines of the Central Railroad of New Jersey and the Reading?

Mr. BAER. No; I have not—I will say as to the general idea that I have given you that.

Com'r PROUTY. It was stated that it could be computed from the report there.

Mr. BAER. The purchases were 1,034,000 tons for the Reading
1220 Coal and Iron Company in our last report, and I stated that it ran from nine hundred thousand to eleven hundred thousand tons.

Mr. SHEARN. That means purchased under these 65 per cent purchase contracts?

Mr. BAER. Yes, sir.

Mr. SHEARN. That is all there is about that. Who fixes the price of the coal sold by the Philadelphia & Reading Coal & Iron Company?

Mr. BAER. It is fixed by the executive committee. The general manager gets up a circular of what he thinks the price of coal ought to be, and then that is submitted to me, and I discuss it with him and go over it with great care, and then generally we have an executive committee meeting every Friday, and either formally or informally the executive committee passes upon it. I say informally because Mr. Harris and Mr. Walter, the two old receivers of the Reading Railroad System—Mr. Harris being an expert coal engineer and president of the coal company and of the Lehigh Navigation Company—are with us

every day. They come to the office and take lunch with me and the executive committee, together with Mr. Steele, who has never been there for a year, and we discuss these things informally or formally. If it happens to be on Friday that the question comes up we may
1221 have a formal meeting of the executive committee, but if it comes up Monday when these gentlemen come up to lunch, I would probably talk over with them what the circular price of coal is going to be.

Mr. SHEARN. The general manger—is that Mr. Richard?

Mr. BAER. No, sir; Mr. Henderson.

Mr. SHEARN. Who fixes the price of the coal of the Lehigh & Wilkesbarre Coal Company?

Mr. BAER. That is fixed by me in the same way after consultation with Mr. Richards, the general manager of the Lehigh & Wilkes-Barre Coal Company, and at times with Mr. Heilner, who is our sales agent in New York, but generally with Mr. Richards, who is general superintendent of the Lehigh & Wilkes-Barre Coal Company, who comes regularly to Philadelphia on every Friday and spends three or four hours there with me going over the business of that company.

Mr. SHEARN. You say very emphatically that the price is not fixedas the result of any conference with Mr. Thomas or Mr. Truesdale?

Mr. BAER. It never has been, Mr. Shearn, in my day. I have not only not fixed the price, but I have stood out against any discussion
1222 of the price with those people because I knew the clamor of this question of combination, and I have as a lawyer been careful throughout my administration not to cross what I consider the line of doubt on that subject. I have not permitted anybody to even dominate on this question of the price of coal. When I fixed the price of coal for our company, after it had been fixed and the circular was out, I was hammered roundly by some of the other people, they saying that I had arbitrarily fixed the price and they had to meet it when they fixed the prices—some of them; I am not going to name them; they can testify themselves. The only discussion I had with Mr. Thomas was that he complained to me that my low price in Chicago and Buffalo was interfering with their price so that they could not get a higher price that I was getting, and it was not fair and right that I should be selling coal at such a low figure there. That is the only time that Mr. Thomas and I had discussed the question.

1223 Mr. SHEARN. What did you do after he spoke to you about it?

Mr. BAER. I maintained the price I had fixed, and he was compelled, as his price was higher, he was compelled to lower his price, and as he told me he would lose a lot of money that he could have made.

Mr. SHEARN. Didn't you have fixed the price of coal by agreement with Mr. Thomas and Mr. Truesdale when company coal was sold lower than the market price in New York in January and February of this year?

Mr. BAER. No, sir. I fixed that price myself without consultation with anybody. I thought that we were the strongest people, and I made up my mind that without regard to what any of the other companies would do I would do what I did do—fix a price and compel the retail dealers to abide by it. I have stated to the public several times all the

facts connected with that. I not only fixed a price, but to protect the public I gave notice to all the parties who bought coal from us that if they undertook to sell that coal at retail for a higher price that the one at which we sold it, plus their fair commission and expense of
1224 handling it, we would not deliver coal to them, and several of the retail dealers threatened to bring suit, because they said I had no right, arbitrarily, and I admit it was arbitrary to say to a dealer: "We won't, if you sell that coal for a higher figure than we think is just, we won't sell coal to you." But the circumstances and demand decided, perhaps, arbitrary action, and I took the responsibility without consulting with anybody, with the exception of Mr. Harrison and Mr. Welsh, and there was a great deal of doubt in their minds at first at the first suggestion that I made to them of it of my ability to carry it out. I fought it through.

Mr. SHEARN. You and Mr. Thomas and Mr. T'uesdale, between you, have the power to fix an arbitrary price on coal at tide water, have you not?

Mr. BAER. No; we have not. Only, like everything else, coal is a commodity the price of which is controlled by demand and supply. The competition of bituminous coal is so great, and the competition between the companies themselves is so great, that no one could fix an arbitrary price on coal, and my theory of fixing the price of coal is simply that you take the cost of production, a fair transaction and a fair profit, and up to this time in all the history of the Reading Railroad it has
1225 not been able to make money because of the low returns it gets from its coal. It has not paid dividends, with the exception of the last few years, on twenty-eight millions of stock; it has not been able, either through the coal & iron company or the railway company, to make enough money to give its stockholders a fair return, and the same is true of the Lehigh Valley. Now if we undertook to put the price of anthracite coal higher its consumption would diminish; we could not do it. Bituminous coal is a sharp competitor with us. It forces us to sell certain—forty per cent of anthracite coal is sold all the time in market below the cost of production, Mr. Shearn.

Mr. SHEARN. But you have put the price fifty cents over this time last year.

Mr. BAER. We have put the price of fifty cents because the cost of it has gone up in all directions. We could not increase wages. You see by our reports that we have made no money. Do you think the cost of producing a thing can be advanced and the cost to the public be reduced? If you turn to these reports you will see that the cost of producing anthracite on every ton has gone up with the last three years over 30 cents in our company. Now, that don't mean 30 cents on prepared
1226 sizes, but it means 30 cents on the total output of coal, which includes all the small sizes of coal as well as the large. We could not without increasing that cost to the public, the cost of coal to the public, we could not go on without reducing our companies to bankruptcy.

Mr. SHEARN. How much of an increase in your revenues is there as the result of increasing the price of coal fifty cents a ton?

Mr. BAER. How much?

Mr. SHEARN. Yes.

Mr. BAER. I can not tell you that until the end of the year. The result I can not give you. Until the accounts are made up I would not be able to say, because they are mixed up with expenses of the strike and enormous expenses connected with getting the collieries into condition after the strike, so that I can not tell you, but I will tell you one thing—that we won't end the year with a profit big enough to pay dividends on our stock.

Mr. SHEARN. Well, is that because coal is too low or because your stock is too high?

Mr. BAER. The stock of the Reading System to-day represents less than the actual values of the Reading properties.

Mr. SHEARN. That is, including the coal properties?

1227 Mr. BAER. I am speaking of the Reading System, including the coal property and everything we have. That property to-day could not be reproduced at fifty per cent greater cost; through a process of reorganization the Reading *Reading* Railroad's present valuation represents, or did represent at the time of the reorganization, actual values. We have, for example, to give you an idea of what is involved in that, we have 160,000 acres of coal land, and we estimate that 90,000 of that acreage contains coal. We have an enormous system of railroads, the revenue from which you can see, and for the years 1901 and 1902 the total gross receipts of our companies were sixty-two millions of dollars, and on gross receipts of sixty-two millions of dollars we have been only able to pay four per cent on twenty-eight million of our stock, leaving——

Com'r PROUTY. You mean gross receipts of the railway company?

Mr. BAER. No; of the three companies, sixty-two millions; and there is no business, there is no large company that I know of that—with perhaps the exception of the Lehigh Valley—in the United States, where the earnings, compared to the value of the business, are so small as in the Reading System.

1228 Mr. SHEARN. Now, I ask you how much your annual revenues would be increased by the increase in the price of coal fifty cents a ton?

Mr. BAER. I can not tell you, because the unknown factor is what the increased cost of the coal is.

Mr. SHEARN. No; but I mean how much more do you estimate you will receive for coal in a year, in this coming year, by reason of your increasing the profits fifty cents a ton?

Mr. BAER. I say I can not tell you, for two reasons; that I don't know as yet how much of the fifty cents a ton the domestic sizes, prepared sizes, confined to that, will be consumed in the increased cost that is upon us in producing this coal, nor am I able to say what the effect of the award of the Commission is going to be. Under the award of the Commission, which went into effect the 1st of April, we lose 23 working days, equivalent to a month, the reduction in hours of time amounts to 23 days and a little better, which means a reduction of time of working. In addition to that we have fallen short up to last night 200,000 tons of coal in April because the men won't work. They are working this week.

Mr. SHEARN. They were locked out, weren't they?

Mr. BAER. They weren't locked out in the sense you mean.

1229 They and refused to work unless we would give them ten hours pay for seven hours work, and we declined to do that, and

they said they would not work; that was all there was about that. Now, I do not know where there is dissatisfaction; I can not tell how many collieries we can work; I hope we can work them, but I can not form the remotest idea what, with the increase of wages, the increased cost of everything—because when wages in one direction are increased, supplies, and they are very large, increase—the cost of supplies increase, and what with the reduction of output of the mines, I am not in a condition to prophesy as to what the effect, financially, is going to be on our operations. I will be able to tell by the 30th of June pretty fairly, but you must excuse me from giving a guess at it. Now, for example, let me give you an illustration. In the month of March there was a great clamor about the market not being supplied with coal. Why, in the month of March we were compelled, in the Reading Company, to store 429,000 tons—half our output—for which no market could be found, and in the Jersey Central we stored 178,000 tons, so that when we began in March we had 237,000 tons in storage yards of the Lehigh & Wilkesbarre Coal Com-
1230 pany, and on the 1st of April we had 529,000 tons of coal for which there was no sale. You see those are conditions that we practical men have to deal with every day and you can not——

Mr. SHEARN. But you hadn't announced your price at that time—no one knew what it was going to be?

Mr. BAER. Why, there was not any trouble about the price. We had a price in March; we have a price now.

Mr. SHEARN. What was it in March?

Mr. BAER. Well, I will have to——

Mr. SHEARN. A $5.00, was it not?

Mr. BAER. Why, yes; that is one price.

Mr. SHEARN. Well, on prepared sizes I am speaking——

Mr. BAER. My dear friend, you only think of New York. You think New York's the world. $5.00 in New York. You ask me what the price in New York is. It is a varying price at different points. You gentlemen of New York, when you think, think always of New York. If you asked me the price in New York I would be able to say. It was $5.00.

Mr. SHEARN. And now it is $4.50. Possibly that has something to do with the fact that there was not a market for all this coal you had stored, because you hadn't announced the price.

1231 Mr. BAER. Well, it may or may not have been due to that.

Mr. SHEARN. Well, you say you can not fix an arbitrary price, but you find you can fix a price of $4.50, which is fifty cents more than it was this time last year, and that the people have to pay it, don't you?

Mr. BAER. Simply because that is a reasonable price, and bituminous coal has gone up into a higher figure in proportion to that. The advance in bituminous coal by reason of the extraordinary industrial conditions of the United States was even greater than that of anthracite. Of course, the anthracite and the bituminous situation has been aggravated by the protracted strike, but I can not state how long we can maintain $4.50. For the present we can maintain that price and sell a reasonable amount of coal. At $5 a ton in March we could not. Now, I can not tell you what I am going to try on the 1st of May to advance the price of coal, perhaps ten cents a ton, and try to maintain that.

Mr. SHEARN. And working it up to $5.00?

Mr. BAER. And work it up to $5 if I can. If the market won't take it, I will have to come down.

1232 Mr. SHEARN. What is the method of working it up?

Mr. BAER. Working it up?

Mr. SHEARN. Withhold the supply until the people are ready to pay?

Mr. BAER. There never was a time in the history of the Reading Railroad since I have been connected with it, and certainly none under my administration, when any supply of coal was withheld, unless it was withheld involuntarily, as in the case of the strikes, and the theory of the Reading Coal & Iron Company has been all along—and one that I am intensely interested in bringing about—was to get in storage yards a large supply of coal, so that if a strike occurs, or if a flood comes, as the floods did come last year, in 1901, December and February, and drown out our collieries, we will have reserved stocks upon which to draw. We are now engaged in building storage yards. We have capacity for a million and more tons, but for the last two years we could not put any coal in those storage yards, because the public demand for coal was so great, greater than we could supply, and the mine leaders would not agree to mine, to allow coal to be stored.

Mr. SHEARN. But I asked you what was the method of working the price from $4.50 to $5.00 a ton?

1233 Mr. BAER. Fixing the price, seeing whether the market will take it; and have our agents go around and offer it, telling them, "If we give you coal in May at $4.50, if you wait until June we will charge $4.70, until in the winter months it will go up to $5.00," and we will have the coal at $5.00, which is, under present conditions, a fair and reasonable price and will not give us an undue profit, it will not give us four per cent, if we could maintain $5.00 a ton——

Mr. SHEARN. Four per cent on what?

Mr. BAER. On our stock.

Mr. SHEARN. On whose stock?

Mr. BAER. On the Reading stock.

Mr. SHEARN. On the Reading stock. Have you informed Mr. Thomas of your intention to try to work the price of coal up from $4.50 to $5.00 a ton?

Mr. BAER. I have not.

Mr. SHEARN. Or Truesdale?

Mr. BAER. I have not. The circular put out announces that.

Mr. SHEARN. Have you any reason to believe that they will cooperate with you in that attempt?

Mr. BAER. I think they would be very foolish not to do it; if

1234 they can get the same price we can for coal they would be foolish to sell it at a less price, would they not?

Mr. SHEARN. You bring a comparatively small quantity of coal to this market compared with what they bring? In other words, you could not fix the price for this market alone and unaided?

Mr. BAER. I think I could. I think if I undertake to sell coal at $4.50 and the rest undertake to sell it at $5.00 in this market, we would probably take the market.

Mr. SHEARN. Until the 800,000 tons you send here gives out?

Mr. BEAR. Yes.

Mr. SHEARN. You only send to New York, as I understand, your surplus?

Mr. BAER. Yes; but don't you know that a very small percentage of any article, say ten or fifteen per cent, can affect the price? People don't like their trade to go. When you once get a customer—if you were a merchant you would understand you want to hold every customer and deal fairly with him, and if Mr. Thomas has a customer in the city of New York who says, "Mr. Thomas, I have always got my coal from you, and I want to buy it now at the same price we can get
1235 it from Mr. Baer's companies," Mr. Thomas would have to say, "All right, I will have to give it to you," because he would lose his customer if he did not.

Mr. SHEARN. So long as the small supply lasts, of course, as long as your 800,000 tons last, but after that goes, of course, you could not fix the price?

Mr. BAER. That is a question of reasoning that you and I would not agree about.

Mr. SHEARN. You say there is competition between these companies, these coal companies?

Mr. BAER. Yes.

Mr. SHEARN. In the sale of coal?

Mr. BAER. Yes. We try to take on other customers and we try to get into the markets wherever we can.

Mr. SHEARN. Do you encourage that as a policy of your companies?

Mr. BAER. I do. I tell my sales agents to go and sell coal, and when I see in any one month that our sales are behindhand I send for the agents and want to know why it is that we have not sold more coal, and each company does the same thing, as all merchants do, friendly and square competition. It is not necessary in a competitive business that every man should be a cutthroat. The merchants of your town
1236 here sell practically at the same prices. They have competition. They are competitive in facilities, and quality, and everything else; competitive in energy. Part of the business in selling coal, as in everything else, is to have good sales agents.

Mr. SHEARN. But Mr. Thomas has testified that there is no competition in the company and he does not believe in it; that the greatest thing in the country to fear is competition.

Mr. BAER. Well, Mr. Thomas has to determine those questions for himself. I have not so testified. I believe in competition, but probably not in the sense you do. I do not see what this has to do with all this——

Mr. SHEARN. Does the Philadelphia & Reading Railway Company or the Central Railway of New Jersey make any effort to procure traffic in coal; that is, customers going to the Lehigh Valley, or the D., L. & W., or to the Erie?

Mr. BAER. Why, no; not in that sense. You would have to go in and build. How could you get traffic in coal? Here is a colliery
1237 on the Erie road. Do you mean to say we would go and build across country, to build a coal line of railroad, and take the chances of getting coal from the Erie colliery? That is not practical.

Mr. SHEARN. I do not mean any such thing. But some of these collieries are reached by several roads; for instance, the Parish Coal Company, up in Luzerne County, is reached by the D., L. & W. and by the Central Railroad Company of New Jersey.

Mr. BAER. Where we go into a country we try to get all the coal we can, as, for example, the Pennsylvania Railroad Company is just now opening a branch that went into one of our collieries on the Schuylkill. We can not make any objection. We don't own it. It has been shipping over our road. If any of the companies want to do it, we can not help it. It is a thing all of us can do. We do not like it, and we do not like to lose the trade, but we have no control over the individual operators, if they want to make a new connection.

Mr. SHEARN. Don't you refrain from building into the territory of these so-called rival roads of yours?

Mr. BAER. No occasion to. The question has never been presented.
The roads I am president of are located geographically in such a
1238 way that we could not well build, and would not want to go in other people's territory.

Mr. SHEARN. But the Central Railroad of New Jersey and the D., L. & W. touch the same reason, don't they?

Mr. BAER. Yes.

Mr. SHEARN. Do you mean to say, that the Central Railroad of New Jersey is actively engaged in an attempt to get traffic away from the D., L. & W.

Mr. BAER. No; certainly not actively, but what I mean——

Mr. SHEARN. They would have to be pretty active to do it?

Mr. BAER. I simply know no case in which we are trying to steal any of the Delaware——

Mr. SHEARN. It wouldn't be a theft; you are entitled to it; there is no crime about it?

Mr. BAER. No; I do not think so, in fairness; I do not think where one company builds a branch road, at great expense, and adjusts the sidings and everything, all the essentials to deliver coal, and providing it is treating the coal miner fairly, that no company has a reasonable right to
come over and say, "This is a little business that I want." I do
1239 not think it is the right way to do. The world is big enough. Each company can develop on its own lines, its own property, its own industries, and get along better in that way; and by encouraging people to locate, and giving them proper facilities. The idea of building railroads, that one shall go into a developed country for the mere purpose of getting that other trade, is entirely disadvantageous from a railroad standpoint, nor is it any advantage to the public.

Mr. SHEARN. But irrespective of the question of the public or the question of motive, what I am anxious to know is the fact whether, as a fact, you do actively compete for one another's business up in the coal fields?

Mr. BAER. Why, as I tell you, the collieries are, so far as I know—they have their connections with a particular road; and in my administration I have not known of any case where there was a controversy between companies about the tonnage from a colliery, with the exception of the incident I gave you this morning, when the Ontario & Western

came in and said they had a contract with one of Simpson & Watkins' collieries.

Mr. SHEARN. I understand; but outside of that, and since, you
1240 know of no case where the companies have actively competed with one another for the coal business—the coal traffic.

Mr. BAER. For coal traffic? In the sense of building lines into other collieries they do compete in every way to get coal traffic and to get coal territory. If you hear of any person who wants to go into the coal business you probably will go to him and say, "Here, locate on our lines; we will lease you land, give you coal territory"——

Mr. SHEARN. I am not talking about collieries that are going to locate; those that are located. Take the Dodson Coal Company on the Schuylkill region, which is reached by the Reading, the Lehigh Valley, and the Pennsylvania Railroad.

Mr. BAER. I do not know who has that. I do not know who ships that, but that would be regulated by a different condition of things in my judgment, and that is this: The party having a colliery would take into consideration what markets he could reach best over one system or the other. In such a case probably the Pennsylvania Railroad Company, a large system, and having a small quantity of anthracite coal. Mr. Dodson might say, "I would prefer the Pennsylvania Railroad,
1241 because they have not as much anthracite coal as is required for their system, my chances of marketing the coal in the towns and along their lines would be better than on the Reading." All those things actuate the individual operator when he comes to make a selection of the particular road with which he will deal.

Mr. SHEARN. But if he decides on the Pennsylvania, do you go to work and actively endeavor to procure him to send his traffic by your line?

Mr. BAER. I do not know. It would depend on the circumstances. If we could offer him better advantages.

Mr. SHEARN. I thought you said you did not believe in that; that the world was big enough without resorting to such methods?

Mr. BAER. I said I did not believe in going to established industries that already had adequate railroad facilities, and under the pretence of building a railroad that would lessen the cost, induce that man to withdraw his traffic from the existing railroad, that I did not think that was a wise policy or a good one.

Mr. SHEARN. Do you say that it is a fact that you do compete actively with other railroads for coal traffic where there are two or three lines reaching the same region?

1242 Mr. BAER. Why, I can not answer it in any other way than I have answered. I have tried to be explicit about it.

Mr. SHEARN. That will do if you can not answer it any more definitely. Now, what not about interfering with the territory covered generally by these various railroads? Isn't there a pretty well marked division of territory?

Mr. BAER. How do you mean?

Mr. SHEARN. For instance, in Philadelphia, all the coal there—practically all the coal there—is brought by the Reading and the Pennsylvania, is it not?

Mr. BAER. Well, yes and no. The Lehigh Valley sends coal there. The Lehigh Navigation Company is a very sharp competitor of ours in Philadelphia, and the Pennsylvania sends coal there. The Lehigh Navigation Company has a canal and can bring its coal around by water, and it goes up on to the Schuylkill, right in the heart of Philadelphia, and is a very decided competitor. But what interests you in Philadelphia? Is that interstate commerce? Where are you going to now? Are you going to redeem Philadelphia from the bondage of the oppressors?

1243 Mr. SHEARN. Now, I ask you whether you know if there is any arrangement whereby one road keeps out of territory that it might reach but which has customarily been supplied by another road?

Mr. BAER. I do not know of any such thing.

Mr. SHEARN. You do not know of anything of the kind?

Mr. BAER. No.

Mr. SHEARN. Now come to the point about the allotment of tonnage. You know of no agreement whereby the tonnage of the respective companies is divided up into substantially fixed proportions?

Mr. BAER. No; I do not say that.

Mr. SHEARN. Well, do you?

Mr. BAER. Do not say I said something which I did not say.

Mr. SHEARN. Do you know of any such agreement?

Mr. BAER. I do not; but I will explain what I do understand to be the long practice. Years ago—how many I do not know, I am speaking only from my understanding of the situation and what from a railroad standpoint I have learned in my relations with railroads——

1244 The CHAIRMAN. Your answer to this question and the explanation which you have commenced will take some little time, and it is apparent that your examination can not be finished to-night.

Mr. BAER. I am afraid that is so.

The CHAIRMAN. Can you be here to-morrow morning?

Mr. BAER. How long, Mr. Shearn, are you going to take?

Mr. SHEARN. Not to exceed half an hour.

Mr. BAER. Couldn't you finish with me to-day? I want to go to-morrow and discuss some bills that were telegraphed to me last night. They are important bills and I would like to get a chance to take them up and think about it.

Mr. SHEARN. Could you come for a few minutes on Friday? Suit your convenience.

Mr. BAER. I will come in the morning.

Adjourned to to-morrow, at 10.30 a. m.

1245 NEW YORK, N. Y., *April 30, 1903—10.30 a. m.*

The CHAIRMAN. Gentlemen, are you ready to proceed?

Mr. SHEARN. I ask Mr. Baer to take the stand.

The CHAIRMAN. Wait one moment, please. Is Mr. Mecker in court this morning?

(No response.)

Then Mr. Baer, you may take the stand, please.

GEORGE F. BAER resumed the stand.

Mr. SHEARN. Mr. Meeker asks whether he may be excused until 2 o'clock.

The CHAIRMAN. Is there objection? Mr. Meeker may be excused until 2 o'clock.

Mr. SHEARN. Bearing upon your testimony yesterday, Mr. Baer, that you intended to work the price up from $4.50 to $5 a ton, will you state if purchasers in this month or in the month of May, if the price is ten cents higher, will be entitled to receive their coal at that price, irrespective of the time of delivery?

Mr. BAER. No; coal must be delivered in the month.

Mr. SHEARN. In other words, if they place an order with you this month for as much coal as they want at $4.50, if you do not
1246 deliver it this month and the price next month is $4.60 they will have to pay $4.60?

Mr. BAER. Yes, sir.

Mr. SHEARN. And if they do not deliver until next month they will have to pay what the price is then, or say, $4.70?

Mr. BAER. Yes, sir.

Mr. SHEARN. Then you do not expect absolute and unconditional purchases at $4.50 to be delivered except as soon as you are able?

Mr. BAER. The delivery is restricted to the ability to deliver in the month.

Mr. SHEARN. That suggests another method by which you will succeed in working the price up, does it not—to withhold the deliveries until the price reaches the level which you think is proper?

Mr. BAER. But we do not. We deliver all the coal, and are anxious to deliver all the coal we can mine in any month. We are exceedingly anxious to do that. It is to our interest to do that.

Mr. SHEARN. Since 1897 and 1898 there has been an enormous increase in the production of anthracite coal, has there not?

Mr. BAER. Well, "enormous" is a pretty strong word.

Mr. SHEARN. Sir?

1247 Mr. BAER. "Enormous" is a pretty big word. I would say there has been a steady increase in the consumption of anthracite coal beginning possibly in 1897. I will give you relatively the figures of our company, which will probably be an index to the others. [After consulting report.] The tonnage was 9,464,598 tons in 1897. That is the report of the Reading for that year. I think I can give you another figure from that.

Mr. SHEARN. Perhaps this will assist Mr. Baer——

Mr. BAER. I will get at these figures very readily if you will just allow me for a moment. It increased from the figure I have given you to 9,533,000. That is the report of June 30, 1898, for the year ending at that time. That was an increase in round numbers of about 70,000 tons.

Mr. SHEARN. Without dwelling on that any more, I call your attention to the reports showing the shipments of anthracite, given in the Treasury Department's bulletin entitled "The coal trade of the United States," on page 690, showing that the total shipments for 1898 were

48,899,751; for 1899, 47,665,201; for 1900, 45,107,484; and for 1901, 53,568,214. Now, when I spoke of there being an enormous increase I was referring to the fact that there was a difference between
1248 1901—between fifty-three and a half millions for 1901, as compared with forty-one millions for 1898; and during this same year——

Com'r PROUTY. Just a minute. Mr. Baer, won't you give us the production of your company for each year? You have given us the production for 1897 and 1898; now give us the production for 1901.

Mr. BAER. I have given you '97 and '98. I will give you 1900, too. In the year ending June 30, 1900, the tonnage of anthracite carried—this is the transportation, not the production—was 10,672,556.

Com'r PROUTY. That is for the year ending June 30, 1901?

Mr. BAER. No; ending June 30, 1900. It decreased the next year to 10,523,891, which was a loss of 148,665 tons.

The CHAIRMAN. Have you the figures for the year ending June 30, 1902?

Mr. BAER. Yes, sir [referring to report]. In 1902, 9,465,953 tons, a loss of 1,059,038 tons, as against the previous year.

The CHAIRMAN. There was a strike?

Mr. BAER. Yes, sir. Our fiscal year ends June 30, and these
1249 figures are based on that. The strike accounts for the decrease in 1901. The 1901 figures cover from the 1st of July, 1900, to the 1st of June, 1901, and we had a strike in the fall of 1900.

Mr. SHEARN. Was the capacity of the collieries the same in 1896 as it was in 1901?

Mr. BAER. Well, approximately. Our colliery capacity is slightly decreasing by reason of the number of workable collieries being reduced. Some of them were drowned out during the strike and it will not pay us to pump them out. The quantity of coal that can be mined from some of the shafts is too small to justify the expense of pumping them out and repairing them.

Mr. SHEARN. Was there in 1896 about the same colliery capacity as in 1901?

Mr. BAER. Approximately. The number of collieries is less now, but approximately we can produce about as much coal.

Mr. SHEARN. That is, in 1897, 1898, and 1899 you could have produced as much coal as in 1901, if you had chosen to do so?

Mr. BAER. Not if we had chosen to do so. We could not market it.
1250 Mr. SHEARN. People didn't want the coal in those years?

Mr. BAER. I do not know whether they wanted it or not, but we could not sell it in the market.

Mr. SHEARN. At the price you asked for it?

Mr. BAER. We could not sell it for the price we asked in the market. I do not think we could have sold it at all.

Mr. SHEARN. During those same years new collieries have been developed and old collieries have been discontinued?

Mr. BAER. No.

Mr. SHEARN. Have you not spent large sums of money in developing new collieries—new workings?

Mr. BAER. No. We have spent some money, not on new workings but in rebuilding shafts, and we have spent a considerable sum of money on five new collieries that we have located which will take a good many years to get ready. It takes a very long while in the Schuylkill region to develop a colliery. It can not be done under—well, you can hardly do it under three years to start with, and then the colliery capacity
1251 is very much limited, because until you have your passageways made you can work but very few people in them. You have got to be driving ahead and making space—that is, opening out the colliery to enable men to work, and taking into account the depth to which we have to go now, which runs from 1,600 to 2,000 feet; it takes a very long while to sink the shaft, and you can work very few men in it; it is very troublesome to work and tedious to work, and so it will take from three to five years in our region after we have started the development to develop a colliery.

Mr. SHEARN. But prior to 1896 you had also been spending large sums of money for similar purposes, sinking shafts and developing new collieries, have you not?

Mr. BAER. No; during the time of the receivership there was a rebuilding of breakers and the enlargement of shafts and repairs of that kind, but the number of collieries that the Reading had, as I recollect it, in the beginning of the receivership, was 47, I think. Some of them were unprofitable, and gradually were abandoned, and then the capacity of the other collieries was increased generally by enlarging the breakers, so that more coal could be passed through the breakers, because
1252 you well understand that when a colliery has worked a good many years the field of operations underground is very broad; you have more rooms in which you can work and the colliery can soon produce—the mine, I mean—can produce more coal than the breaker which was originally put there will take. We have tried constantly to enlarge the breakers and increase the facilities.

Mr. SHEARN. You have enlarged the breakers and thus increased the facilities for producing coal in the years I have mentioned, have you not?

Mr. BAER. In a general way.

Mr. SHEARN. Quite largely increased your facilities for producing coal?

Mr. BAER. We have bettered our facilities, I should say. I do not think we have increased the capacity.

Mr. SHEARN. The result is that your ability to mine coal has been increased since 1896?

Mr. BAER. No; I do not think so. I think the improvements we have made enable us to reduce cost and have better facilities than we had before, but I think what we call the mine capacity—that is, the output of the mine—has not increased from that time.

1253 Mr. SHEARN. You recollect the month of January, 1902, don't you, and what an enormous production of coal there was—5,000,000 tons mined during that single month?

Mr. BAER. Yes, sir; and I recollect, too, in the month of——

Mr. SHEARN. You did your share of that?

Mr. BAER. I will look and see about that.

Mr. SHEARN. January, 1902—not January of this year.

Mr. BAER. Just pardon me until I see. No, on the other hand, in January, 1902, we fell behind the previous year to the extent of—I will have to figure that. We produced 839,300 tons in January, 1902, and in January, 1901, we produced 1,085,744.

Mr. SHEARN. Then in January, 1901, you produced very much more coal than you had ever produced in any one month before?

Mr. BAER. No, we did not.

Mr. SHEARN. Had it ever been equaled?

Mr. BAER. Yes, sir. I do not remember what the highest month is. I am speaking of tonnage now, but I think we have nearly reached
1,200,000 tons, or possibly a little in excess of that. But that
1254 was not the highest month.

Mr. SHEARN. When was it that you reached that maximum production in any given month?

Mr. BAER. I really can not answer.

Mr. SHEARN. January, 1903?

Mr. BAER. Oh, no; January, 1903, was only 1,080,000 tons.

Mr. SHEARN. With all these differences in production, indicating a higher producing capacity at some time than is actually put out, and with these increased expenditures for opening up new shafts and increasing the productive capacity of your mines, how do you account for the fact that your proportion of output has remained practically fixed from 1896 down to the present time?

Mr. BAER. Because the capacity at that time was based on colliery capacity. The arrangement, as I have understood it—and I know it to be so—was that the colliery capacity—that is, the capacity of the collieries on each line of railroad—was taken for the purpose of determining what the proportion ought to be with reference to the distribution of cars. The difficulty in the situation for a series of years had been this:
In the winter months, in the fall and winter months, say, for six
1255 months in the year, the market will take all the coal that can be reasonably mined. We can work full time and there is no difficulty in the market taking it, but in the summer months, by reason of the fact that anthracite coal is largely used for domestic purposes and not for manufacturing purposes, the consumption of coal falls off very heavily, and then we get into this trouble. When the collieries, counting the coal companies collieries and individual collieries, want to mine full, they get our cars filled with coal that can not be sold, and we have strings of cars on our sidings and our ports are closed up—that is, our docks, I mean—and wharves are filled up with coal that is dumped there and with cars standing there, and the whole transportation system is put in such a condition that you can hardly move the traffic for which there is a market. Now, during these times in the past, the private operators always complained that the railroad companies, such as the Reading Railroad, which at that time owned the coal & iron company's stock, discriminated in favor of its own company and gave its own collieries cars to the exclusion of others, so that they would have to shut down their mine when the rest would be working. A great many plans
had been suggested during the many years in which the anthra-
1256 cite coal business had been going on to try to adjust that, and finally the private operators and the transportation officers of the

railroad companies came to an understanding that it would be fair to take the colliery capacity along the lines of each transportation company, you see, and then taking the normal output of a year, ascertain what percentage of the market each company supplied, merely for the purpose of distributing the cars and enabling the transportation companies to get rid of this congestion. The private operators were content with that; they said that was fair, and if the rest did not mine more than the market would take they would not mine. So it came about that practically the basis that is given here, what is called the tonnage based upon percentage, was accepted by everybody, for example, take a month and see how that is done—for the month of April, or for the month of March, which are the figures I have before me here. We have to determine what the possible output of the month of March this year will be, what the market will take, what can be marketed without congestion, and we would take what was done in a normal month of March preceding and add a percentage, and then say to the transportation people, now you distribute the cars on this basis to the different collieries.

1257 If it turns out as it does some months—we usually start with as low an average as we can, and in spite of this distribution we get our roads congested and our ports congested and our sidings full of loaded cars whereby our equipment and everything is put out of use; we can not use it even in the bituminous traffic or in any other way. We simply say to this colliery here, that our port at Port Richmond is full and we can not take any more coal there and can not give you any more cars to Port Richmond or to Port Reading until these loaded cars are out of the way, because we have not the cars. That is the theory upon which it works. Now, I offer you, or I submit for your consideration, Mr. Ruley's tabulations. I have just taken them from the files. They cover the years since I have been president of the company, beginning with January, 1901, and here they all are. They show what the actual tonnage was or would have been if the old basis had been adhered to and what the increase or decrease is. In March, 1903, there is a decrease in the based tonnage of the Reading of 26,171 tons over the preceding year. The Lehigh Valley Railroad in March has an increase over the based tonnage of 146,000 tons.

Mr. SHEARN. That decrease of the Reading was out of total of how many tons?

1258 Mr. BAER. Of 10,142,000 tons.

Mr. SHEARN. And the increase in the Lehigh Valley tonnage was out of a total of how much?

Mr. BAER. It increased from 502,000 to 964,000. That was the actual increase, but on the tonnage basis, the tonnage basis of the total mined would have been 815,000

Com'r PROUTY. Now, Mr. Baer, who says to the transportation companies at the beginning of a month how many cars you shall distribute to all the collieries on their lines?

Mr. BAER. Every president acts for himself. In our case, it would be Mr. Voorhees. He would be given instructions. He has charge of the transportation department—instructions that we would probably mine—that there would probably be so much coal mined.

Com'r PROUTY. Who would determine that?

Mr. BAER. I determine that each month. I determine it with Supt. Luther, who is in actual charge in the coal regions, and with general manager Henderson, each month. We do not need to determine it now. I say I determine it, but I have not been called upon to determine it or been in consultation about it since 1900. I want to say that
1259 since October, 1900, there has been no necessity for determining anything of the kind. We have increased our car capacity of the Reading from 18,000 coal cars to 25,000, but the capacity of tons is much greater. So that since 1900, when operations were resumed in November, we have transported and mined and given cars to the operators to mine all the coal that could be mined. The difficulty was that owing to floods and strikes it is impracticable and has been up to this time to mine and transport as much coal as the market would take until, as I told you, in March, when we were compelled to store coal because there was no market for it. Now, the only time when there was an exception to this was when, in January, the private operators were claiming, as was stated here, that the average market price of coal was not the price at which we sold our coal, but was the general market price, which instead of being $5 a ton here in New York, might be $10, because after taking advice of counsel, the Lehigh Valley Coal Company was compelled to say to the private operators, "Well, you can take and sell your coal and we will suspend this contract for ninety days to see what you can do rather than run the risk of being mulcted in damages." If they could have maintained their contention, the
1260 Lehigh Valley Coal Company would have had to pay $3 or $4 a ton more for the coal they bought than the price at which they sold it. I stood out and the Reading Company was determined to take the risk until January, and finally when the other private operators had gained their point, I told our private operators "If you want to try this you can try it." What happened was this: It worked very well with these people for a week or two, and then they got their coal in the cars and they crowded our docks and our wharves and they would not sell except at a high price, $9 or $10. We were selling our coal at the old price; they could not sell theirs and they were trying to hold our cars; that is, keeping their coal waiting ten or fifteen days in our cars, and thus we would lose the use of our cars, and then I did give an order to Mr. Voorhees that every colliery where cars had not been unloaded at the ports or at any marketable point, and the shipper had not succeeded in selling his coal and returning the cars, that his new cars—his assignment of new cars, should be limited to the number of cars which he had in use—was to be counted in his allotment of cars—that is to say, if under ordinary conditions the colliery was entitled to fifty cars, and that colliery had thirty cars loaded with coal for ten or fifteen days,
1261 we gave them a reasonable time; if they were not disposing of their coal and were using our cars for storage, that the number of cars they used for storage should be counted in their quota. With that exception there has been no restriction of the number of cars going to collieries that I can recall.

Mr. SHEARN. You say that during the month of March you were obliged to store the coal; the market would not take it?

Mr. BAER. Yes, sir.

Com'r PROUTY. On the 1st of April, say, who determined the amount of coal that shall be mined by your system during that month?

Mr. BAER. Who determined it?

Com'r PROUTY. Yes; who determined it?

Mr. BAER. Since the first of April we have mined all the coal we can. There has been no restriction by order, as I tell you, since the first of November, 1900. The difficulty has been to get the coal. For example, we fell behind in the month of April—the scales close at midnight to-day—we will probably fall behind 200,000 tons less than last April, because the mines did not work. For the last two years we have not been able to have anything like regular work in the regions
1262 at all. The men quit work for a holiday or on any pretense, even outside of a strike, and our effort has been, and it is a continuing effort, to get the mines to work. We are in no way limiting production and have not in any way limited production. The production has been limited by reason of strikes and the things over which we have no control. That condition has only existed since November, 1900. Previous to that, in the summer months, more coal could have been mined than was marketed, and it was customary to arbitrarily determine about how much the market would take and base the distribution of cars in the summer months on that. Whenever it was found the market would take more, of course the cars were furnished and the collieries worked. There was no hard and fast rule about it at all.

Mr. SHEARN. You have the power to restrict the output, then, if you choose to do so?

Mr. BAER. I suppose the coal & iron company, if it disregards its obligations to the public and its obligations to the stockholders, could shut down every colliery and be as arbitrary as the strikers, and not mine a pound of coal.

Mr. SHEARN. You have it in your power to restrict the output of anthracite coal, if you choose to do so?

1263 Mr. BAER. I say that if the Reading Coal & Iron Company wants to disregard its obligations to its stockholders and its public duty, that it has the corporate power to direct that only one or more of its collieries shall work, or that none shall work.

Mr. SHEARN. I understood you to say to Commissioner Prouty—I understood Commissioner Prouty to ask who had the say as to the restriction of output, if there was to be a restriction, and I understood you to say that you did.

Mr. BAER. I am speaking for my company. With the executive officers of the company, those things are entrusted to me, and I act with the advice of the executive committee or of the board. I didn't mean I had it individually, but as the head of the corporation to whom the details of business of that kind is naturally entrusted. That is all I meant to say. It is a very troublesome question. Very frequently I consult the sales agents; and I consult the general manager, Mr. Henderson, in Philadelphia; and I consult Mr. Luther, and also Mr. Harris, who has
1264 had large experience; and I often see other people and talk to them about what the condition of the coal trade is, and I rely a great deal upon the statistics; and when I find that our collieries are

behindhand—as, for example, take January and February—they were very disturbing factors to me—1903. I will tell you why.

Mr. SHEARN. And to all the rest of us.

Mr. BAER. No; it didn't worry you so badly. In January, 1903, I found that we had decreased 141,879 tons, and the Delaware, Lackawanna & Western had increased 260,403 tons; in other words, that the Delaware & Lackawanna Railroad had in January, 1903, with its much smaller colliery capacity, as I suppose, mined within 24,000 as much coal as the coal & iron company in our region, and I was exceedingly anxious and prodded all I could in the next month to get our production up. In February the result was that they increased only 134,000, and we decreased 57,000.

Mr. SHEARN. As the result of what?

Mr. BAER. The result of mining the quantity in February that we we mined and transported——

1265 Mr. SHEARN. Did you call the attention of the president of the Delaware, Lackawanna & Western to the fact you were delaying the percentage agreement?

Mr. BAER. I did not; it was not necessary. There is no percentage agreement in any such sense as that. There is not at all. The Delaware & Lackawanna Railroad Company, or any company, can transport as much coal as it pleases, and you will see throughout that it does.

Mr. SHEARN. It can't if it lives up to the agreement?

Mr. BAER. There is no agreement about that.

Mr. SHEARN. But there was an agreement, wasn't there?

Mr. BAER. I know of no such agreement other than the one I have told you. There was an agreement to make the basis of distribution of cars on that percentage, but there was no understanding or agreement that no man should mine more than that. That was based upon the recent——

Mr. SHEARN. I am not interested in what is mined. I am interested in what is carried. You say there was an agreement determining

1266 the percentage of the cars furnished to the mines to carry the coal?

Mr. CAMPBELL. I object to your putting into the mouth of the witness what he did not say.

Mr. BAER. Is there any misunderstanding on that subject?

Com'r PROUTY. Mr. Baer has not gone quite that far. He has not told us how the percentage which the Reading Company was to carry compared with the Lackawanna.

Mr. BAER. At that time the basis of colliery capacity between the Delaware & Lackawanna and the Reading, the Reading was twenty fifty and the Delaware & Lackawanna was eleven seventy.

Mr. SHEARN. What were the other percentages?

Mr. BAER. I am going to give you these papers. I want, as a part of my testimony, to offer Mr. Ruley's returns. Here they are from January, 1901, through every month, just showing what each proportion of the transporting companies did.

Com'r PROUTY. Now, Mr. Baer, when you sat down at the beginning of the month to determine how much the Reading Company should produce, how much the market would take, would you estimate that upon the theory that the Reading road should carry twenty per cent

1267 of total output?

Mr. BAER. Undoubtedly, because that was the fair transportation measure of colliery capacity, you see.

Com'r PROUTY. Now, suppose that you found that you had exceeded that twenty per cent one month, what would you do the next month?

Mr. BAER. We keep on mining without regard to that, as you will see. There is no deduction or any credit given one way or the other.

Com'r PROUTY. When you determine at the beginning of the next month how much the Reading should mine that month, would you take into account that the Reading had, during the previous month, exceeded or fallen below twenty per cent?

Mr. BAER. Not at all. As you will see, no account has been taken of it whatever in all the month's reports; the change has been very great from that time. Some of them are far behindhand; but, as I told you, this is no longer a practical question. We have done nothing with this since 1900—November, 1900. I am speaking of a period of time prior to that. Since November, 1900, we have not paid the least attention to percentage allowances whatever. We have kept up the statistics
1268 which are valuable to us—what each company is doing and what the market is taking—because we don't want to have our colliery capacity reduced; it would reduce our transportation; and if we find that any of the other companies increase their colliery capacity, why we will go on and increase ours, just as I am doing now, as I told you. We are building five new collieries—large ones—on the Reading. We are building two at the Lehigh & Wilkesbarre, because I see the contingency that our colliery capacity will be exhausted and that we will be deprived thereby of transportation and of a market for coal, which we are otherwise reasonably entitled to.

Com'r PROUTY. That is to say, you intend to transport your percentage of this coal and you are satisfied that other companies should transport their percentage?

Mr. BAER. I am perfectly satisfied so long as the percentage is the measure of colliery capacity, but I am not going to limit myself to any percentage at all; I am not going to agree, I am going to mine and sell all the coal that I can.

Com'r PROUTY. Now, you say you are opening up five new collieries?

Mr. BAER. Yes.

1269 Com'r PROUTY. As I remember the testimony, your company and the Central of New Jersey have sixty odd per cent of all the coal lands, while they only send to market only thirty per cent of the coal. Why don't you put up twenty collieries instead of five?

Mr. BAER. Because I could not sell the coal; to-day the number of collieries operating through the region is equal to the market conditions and in the next month or two probably will exceed it.

Com'r FIFER. Wouldn't the market demand be increased if the price of coal would be reduced?

Mr. BAER. No; the price of coal can not be reduced at all unless operations are carried on at a loss. Now, that is a factor that must not be overlooked. The reasonable profit that is now made at the present prices of coal is not sufficient return for the investment, and if the market price—we can't reduce the cost, the cost is continually increasing, because the coal must be mined at greater depth. You will see [referring to papers]—I think I can give to you from these—you see this: Cost of coal

mined and purchased for the year was $2.02, which is 20.5 cents higher than the cost for the previous year.

1270 Mr. SHEARN. What year is that?

Mr. BAER. That is 1902. Now 1901——

Mr. SHEARN. Did you state what the cost was, Mr. Baer, when you said that?

Mr. BAER. $2.02.

Com'r PROUTY. Does that include your royalties?

Mr. BAER. It includes the royalties on some lands that we leased from the Girard estate, but there is no charge for royalty to us.

Mr. PROUTY. You do not make any charge against yourself in your bookkeeping?

Mr. BAER. What I had—that is not charged in this—out of the earnings of the coal company we are required to take five cents a ton on our lands as a sinking fund to be paid into the general mortgage; then in addition to that we take five cents a ton for what we call the exhaustion of coal lands, which becomes a fund under our control, and from that fund we pay the opening of new collieries, on the assumption that whilst the coal has been taken away, that if that money is put into improvements on the coal property, that it represents fairly the value of the estate. But if we have royalty to pay, the average royalty on all the coal we mine, the Reading Coal & Iron Company would have

1271 been operated at a loss every year since I have known anything about it.

Com'r PROUTY. What is the average royalty?

Mr. BAER. The royalty runs from 40 to 45 cents a ton on prepared sizes, and I suppose, that taking the pea and the buckwheat and the smaller sizes, that the average royalty would be from 30 to 33 cents. I remember we figured that out in a series of collieries that we were paying the royalty, which amounted to 31.2 cents on all the sizes.

Mr. SHEARN. Does that cost of $2.02 also include the cost of coal produced?

Mr. BAER. It is the average cost of the coal purchased; yes.

Mr. SHEARN. Coal produced and coal purchased?

Mr. BAER. Yes. It is much greater of course now. That was for 1902. The cost of mining our coal has been running—the cost of mining the coal and delivering it on the cars has been running at $1.98 a ton on all sizes.

Com'r CLEMENTS. I want to be sure that I understand you, and if I do it amounts to this. Now, and heretofore, there is and has been

1272 an understanding between these coal roads and the coal companies, whereby the cars were distributed on percentage basis, based upon the capacity of the collieries?

Mr. BAER. Well, heretofore there has been; not now.

Com'r CLEMENTS. Well, I wanted to see whether I thoroughly understood you.

Mr. BAER. Up to 1890 that was so.

Com'r CLEMENTS. November, 1890?

Mr. BAER. Yes.

Com'r CLEMENTS. And it was actually a practice?

Mr. BAER. It was actually a practice prior to 1890—in the summer months.

Mr. MOOT. 1890, or 1900?

Mr. BAER. 1900; I will get those mixed up.

Com'r CLEMENTS. Now, I understood you there was no change in the understanding of that arrangement except——

Mr. BAER. There was no change in it; there never was any agreement that I know of.

Com'r CLEMENTS. I do not mean a written agreement, but an understanding.

Mr. BAER. There was a plan that received the assent of everybody and was acted on for several years prior to 1900.

1273 Com'r CLEMENTS. And that has not been changed, except that on account of floods and strikes and other conditions you have not found it necessary to apply?

Mr. BAER. Yes, that is it. It has ceased to be any use to us at all.

Com'r CLEMENTS. When it was applied did it in fact result in a limitation of the output of the mines for the reason that they would not mine more than they could get cars to ship?

Mr. BAER. Undoubtedly; but they always got sufficient cars to supply the market. There was never any limitation.

Com'r CLEMENTS. Yes, to supply the market at the prices?

Mr. BAER. Certainly; yes.

Com'r CLEMENTS. Now, regardless of the question as to whether it would be proper and justifiable, leaving all that out, undoubtedly the market would have taken more at a lower price, would it not?

Mr. BAER. I think not.

Com'r CLEMENTS. I think not, because the market for anthracite coal is limited so largely to domestic sizes, and the manufacturers don't use it, except in cities, to any extent, where there are smoke ordinances;

1274 and the increase of anthracite coal depends largely upon the increase of population and the increase in the worth of the population, because there is very little coal that we can market except in New England, and New York, and New Jersey, and Pennsylvania. We send some of it West, but it is only the people who live in the West and who are able to use anthracite coal as a fuel because of its cleanliness. We have no market for small sizes of coal in the West. They have to be marketed at much below bituminous coal in order to get rid of them. The small sizes used to be waste.

Com'r FIFER. Is not bituminous coal a competitor of anthracite?

Mr. BAER. Oh, a very severe competitor in every place and everything.

Com'r FIFER. If the price of anthracite coal were raised to ten dollars, would that increase the consumption of bituminous coal?

Mr. BAER. At once. The price of anthracite coal is necessarily regulated by the price of bituminous coal. You can not get away from that proposition. Bituminous coal exists everywhere. It can be

1275 brought cheaply to this great consuming territory. It is a better steam fuel in every way than anthracite and our market is restricted. I am quite satisfied that the effect of this strike is going to put us back years and years in regaining our market. The New England market has been opened to the Nova Scotia coal and to foreign coal and to bituminous coal, so that we really can sell very little anthracite coal except along the seacoast, and that we can sell because we take it to Port Richmond, because we have a fleet of our own vessels we own and we have

to operate, and we send it to the ports along the seacoast; but it is almost impossible now for us to market any anthracite coal in that——

Com'r FIFER. If these coals are sold by competitors in the same market as yours at the price of anthracite coal, wouldn't that increase the demand for it?

Mr. BAER. No; because as I say—why, the principal consumption of anthracite coal is for household purposes. If you would reduce it to a point below the selling price of bituminous coal, yes; but you see that is an impossibility. Bituminous coal can be mined and placed in cars at a profit, under normal conditions, at 75 cents a ton and probably 60.

1276 Com'r CLEMENTS. Go back to this understanding about the distribution of cars based upon the capacity of the collieries, that could be applied again if the conditions were to become such as they were prior to 1900, November?

Mr. BAER. I suppose so.

Com'r CLEMENTS. There is nothing in the way of carrying out now what was done before?

Mr. BAER. I suppose that if a condition exists by which it is impossible to market the coal—anthracite coal—at a fair price, say that the Reading system—that we would be compelled to limit the production at our mines, and that in limiting the production at our mines and all the private operators', so that we might work four days a week and they work four days a week—there is no way I can see of avoiding that. The problem is simply that you can not sell anthracite coal at a loss, and that if you undertake to compete with bituminous coal and meet the low price of bituminous coal, you will sell it at a loss. Now, if we undertake to put an unreasonable profit on the coal, then the public would have a right to complain; but in view of the fact that we, year after year,

1277 exhibit that the two anthracite-carrying companies—the large ones—have not declared any dividends for years, you can readily see that the public can not ask us to do an impossibility. These roads—the Reading road passed through three receiverships in its effort to market coal. There are many reasons why we can not compete with bituminous coal on this question of freight rate. Now, you see bituminous coal can be carried at a much less cost than we can carry it, for this reason, if you take the bituminous coal rates you will find that except in the Norfolk & Western and some of those roads that are built through a cheap country, the bulk of there——

Com'r PROUTY. What do you mean by a cheap country?

Mr. BAER. I mean the damages are cheap—the right of way. I did not mean it in any offensive sense—the country in which railways could be built cheaper.

Com'r PROUTY. I thought you might mean a country where they could operate cheaper.

Mr. BAER. Even they could be operated more cheaply, too. Now, for example, if a road has 75 per cent of the merchandise traffic, then it can carry other traffic—say 25 per cent other traffic—such as grain

1278 and wheat or bituminous coal, as an incidental business, at a reasonable cost, because every bit of new traffic it gets of that kind lessens its general expenses. Its roads there—if it has equipment and all—this additional traffic can be actually carried at a much less cost than a road that is confined to the carrying of a specific article. Our traffic

in anthracite coal is the bulk of our business. Until a few years ago it was eighty per cent of our traffic. Now it is about sixty. And that traffic first has a shore call. We have most expensive roads. I would be very glad if this Commission would go through the anthracite region and see our roads and grades, and the cost of sidings, and the whole terminal facilities there. We have no general traffic for those roads, because of the peculiar condition of the country, the business of the country being limited to the anthracite coal production plus the incidental industries that go up there by reason of the population centering there, so that the railroads have to create the towns, and they get the business only that comes from the people who are engaged in either mining coal or transporting coal. There is very little business done there—it is not a country where general manufacturing can be carried on. They have silk mills and woolen mills, where they can use the surplus; the girl labor,
1279 and all that sort of thing; but there are no great manufactures anywhere from which we can draw; and the only business, therefore, upon which we can depend is the coal business, and when a colliery is exhausted, as they are fast becoming exhausted, that whole investment of branch and sidings is gone. Now, in addition, look at the territory through which we have to transport our coal. When we get out of Schuylkill County we reach Berks County, and we immediately strike a very settled, thickly populated country, where the expense of operating becomes very great, as, for example, in Reading. Reading, from a small town with a grant of the legislature authorizing it to occupy a street, has now become a city of nearly 100,000 feet. Within the last two years we were compelled to build our freight traffic around the city at a distance of some several miles and a cost of two million dollars. The same thing is going on through the towns—we are continually building up territory—until you go to Philadelphia, where now, by reason of the congested condition of Philadelphia, we have to build a line of railroad coming in and avoiding the heart of the city and getting around some grades, and coming in at Neshaminy Falls; and all for
1280 traffic; and, in addition to that, we are confronted with the other fact that the city of Philadelphia has asked us to elevate all our tracks, not only on 9th street, but Willow street. The same is true when you follow our lines here to York; the cost—there is no country—take from Reading to New York, there is no section of the State where the increasing expenses of operating railroads by reason of the population have become so great, and where the terminal facilities required to do your business costs so much. We have 300 miles of track in the city of Philadelphia, almost exclusively for distribution. Now, then, you come to that question, too, of distribution. There we are met with another problem that don't affect the bituminous coal trade. Bituminous coal is taken from the mine just as it is; it is one coal; it is shipped in a train load, generally used by manufacturers. They might have a train load of three thousand tons, say, which is the maximum in our road of coal all going to one place for a manufacturer where they have facilities for unloading. Now, you take the anthracite coal; we start a train load of coal up in Schuylkill, consigned for New York, for example. Now, that train will consist of six, seven, or eight sizes of coal, and it
1281 may be white ash, or red ash, or other kinds of coal, and have got to ship it out and sort all this coal, because one customer wants

broken, another pea, another chestnut, and so on; one wants pea of this quality and another that; so that the use we get of our equipment, this enormous delay in not only the switching but the delay in sorting out this coal and getting it unloaded—used largely for domestic purposes—when we get to a city like Philadelphia we have got to ship probably one car to this coal yard, and there are forty coal yards in Philadelphia on our line to which we have to ship, we have to send to a small manufacturer two or three cars of a particular kind of coal—all of this involves switching movements that are always costly, and in addition to that it involves a delay, so that the return, from the time the car leaves the colliery until it is returned back empty to the colliery, is proportionately much greater than in the case of bituminous coal. All of those are factors which render it impracticable for us ever to reduce the rate of anthracite coal down to bituminous coal, to the rate per mile on bituminous coal. It would absolutely destroy the
1282 Reading Railroad in this, that it could not be operated at a profit.

If you take off and reduce the cost, I mean the rate of coal to the harbor of New York, in view of the increased costs that are put upon railroads to-day—we have to increase wages ten per cent—it means a million one hundred thousand dollars on the Reading Railroad alone; we are here in the midst of an order from an association directing all the tug men, tug engineers of the harbor of New York, and from Port Reading to all points to which we ship, to resign to-night, some of them have sent in their resignations, unless we arbitrarily advance their wages some forty-seven per cent and agree to limit the hours; and they have refused to consult with us, to confer with us, or abitrate, or do anything else, simply saying that they have taken an oath and belong to an organization and they are going to obey that organization. We can not tell what in the end the price of wages that may have to be paid under such circumstances, and it is utterly impracticable for us to go on with any duty we owe to our stockholders or to the public, and I will assume that it is axiomatic that the true interests of the public consists in every industry and every railroad earning a reasonable return
1283 on the money invested. The country can not be prosperous unless the railroads and the industries of the country are prosperous, and if in cases there are industries and railroads earning more than the measured standard of earnings, which is generally fixed by the rate of interest, then, of course, the public has a right to say that they are getting more than their share of the general prosperity; but in the case of the Reading Coal & Iron Company and the Reading Railroad, which I submit to you, I say that so long as we have not been able for a series of years to return anything to the majority of our stockholders, being limited, as I tell you, to paying four per cent, and even less than only one per cent, on twenty-eight millions of stock out of one hundred and forty millions, it is utterly impossible to reduce our rates without bankruptcy, and if a bankrupt company is a benefit to the public, then, of course, the problem is one that I can not and am not able to solve. I can only say that with justice to the public there is nobody connected with the Reading Coal & Iron Company or the Reading Railroad that wants anything but a fair return for the money invested. If
1284 we could be sure of four per cent—if we ever get up to that—I

shall rejoice in my administration, as having accomplished that which greater men than I have tried for thirty years.

Com'r CLEMENTS. To come back for the present to the question as to the manner in which to attain what you desire as a reasonable rate of profit on coal, I want to ask you how many years, since this percentage basis that we have been talking about and the distribution of cars on the basis of capacity of collieries became in vogue, was in practice?

Mr. BAER. I think about 1895 or 1896, but I am not sure about that. I am only speaking from hearsay about that.

Mr. SHEARN. January, 1896, was the year.

Mr. BAER. Was it?

Com'r CLEMENTS. Do the percentages now differ materially from what they were in the beginning in this practice of the distribution between the different roads?

Mr. BAER. Oh, the actual percentages of what we do do, as you will see by the returns, varies a great deal; for instance, for January, 1902, our percentage was only 18.50.

Com'r CLEMENTS. I mean the percentage fixed——

1285 Mr. BAER. There has been no percentage; it has never been talked about or heard of in my administration since.

Com'r CLEMENTS. Your administration commenced when?

Mr. BAER. April, 1901.

Com'r CLEMENTS. Have they been altered from year to year or time to time, or have they remained what they were in 1896?

Mr. BAER. There has been no change in what is called the percentage basis that I know of, but the actual tonnage has not conformed to the percentage basis—as, for instance, P. & R., the tonnage was 18.50, and in January the tonnage basis was 20.50——

Com'r CLEMENTS. Prior to 1900 did the actual transactions conform to the basis fixed?

Mr. BAER. No, sir.

Com'r CLEMENTS. Approximately?

Mr. BAER. Well, they approximated it within one or two per cent, I suppose. I can not give you those figures. I think you gave them yesterday, didn't you?

Mr. GOWEN. Mr. Shearn put them in evidence.

Mr. SHEARN. They are not in the record. I asked about the Reading only. The Reading Company, 1896, was 20.89 per cent; 1897,

1286 20.2 per cent; 1898, 19.6; 1899, 20.32; 1900, 20.70; 1901, 19.60.

Com'r CLEMENTS. Has there been any material and substantial change in the actual development of collieries on the different roads during all that time?

Mr. BAER. No; except there has been a change of ownership. For example, you take the New York, Ontario & Western. Ever since I know anything they have mined, oh, largely in excess of their percentage. You see, March, 1902, the basis with the percentage on tonnage was 3.10; that is the basis, and they mined—the actual tonnage was 5.55. Well, in March, 1903, this last month, they mined 4.88, on their percentage basis; so if you pick any out at random, November, 1902, there it was 5.28 and the basis was 3.10; so here is another, December, 1902, 5.34; here is February, 4.55; May, 1902, 5.63; here is 10.43 in

September, 1902—they mined 10.43 when the basis was 3.10; October was 7.34.

Com'r CLEMENTS. Can you tell us whether there is some arrangement by the carriers, these various carriers, by which the rates of all of them are arranged?

Mr. BAER. None that I know; never heard of any such arrangement.

Com'r CLEMENTS. The rates are the same on all the different roads where they reach the same point, are they not?

1287 Mr. BAER. I don't know. I really do not know. There are so few points that we reach in common that I am not able to say at all. I would have to refer you to the rates. There has never been any meeting or agreement about rates at all, in fixing rates, not that I know of.

Mr. SHEARN. Not even at the Lawyers' Club?

Mr. BAER. No. I never helped to fix the rate, in my life. I do not know what they are, except the general rate, at Port Reading, is 1.55 on anthracite coal, and I know ten years ago it was 1.85, so that it has fallen 30 cents a ton. I remember in 1892 the rate to New York Harbor here was 1.85 and I know now it is 1.55. I only know that because I looked up the rates at the time of the Anthracite Coal Commission.

Com'r CLEMENTS. Don't you give attention to the important matters of rates in discussing it with your subordinates in the railroad companies?

Mr. BAER. There have been no change in rates since I have been in that I know; the schedules have been the same, and I have been so busy and occupied with other things.

1288 Com'r CLEMENTS. However, they were fixed before you came in?

Mr. BAER. Yes; I do not know of any changes. There have been none that I know of since I have been president.

Com'r PROUTY. You said, Mr. Baer, all you wanted was to have the public pay such rates on coal and transportation that would yield a fair profit to the stockholders of your company?

Mr. BAER. Yes.

Com'r PROUTY. And you are entitled to that. Now, there is one thing more you want? You want to be the judge yourself of what that fair thing is?

Mr. BAER. No; I tell you what that fair thing would be, and that is the normal rate of interest at which profits are to be fixed; profits are fair in a railroad when the return on capital invested is equal to the prevailing rate of interest in a country.

Mr. SHEARN. Suppose the road is overcapitalized, Mr. Baer?

Mr. BAER. Then it will soon go into bankruptcy. I am not in favor of overcapitalizing. I want to say emphatically and repeat what

1289 I said yesterday, there is no thing I look with more horror upon in this country than overcapitalization of industries and railroads. And I pride myself in a life of more than threescore years that I have never been a party to anything of the kind, and I do not believe I will. I believe in honest capitalization and in honest values, both in industries and in railroads, and if there was a false capitalization of these properties, then I would say the rule would be the return to the stockholders on what fairly represented, under existing circumstances, the value of the money invested in it.

Com'r PROUTY. Do you mean what it would cost to rebuild it?

Mr. BAER. No; because that would be fatal to the public. It would be impracticable to duplicate at any cost the systems of railroads in the East. The cost would be so enormous. If you take the pick of any of the big towns—take Jersey City over here—you could not at any reasonable cost duplicate these plants within the growth of these two cities growing up; you could not get the franchises and the privileges, the cost would be, oh, so enormous; as, for example, the cost of building
1290 the Reading Railway originally through the city of Reading, as returned—as shown on their books—was $56,000. The cost of building seven miles of railroad around the city of Reading, going across the river and coming back again and going through the farms, has been over two million dollars.

Com'r PROUTY. What do you mean by the fair value of the property?

Mr. BAER. The fair value of property?

Com'r PROUTY. Of the railroad property.

Mr. BAER. I would say, taking its costs and its accretions and whatever could fairly be charged as improvements to the property—I don't know how—I cannot answer that question how to appraise the fair value of a railroad property. I would say the fair value represents its cost, but that if that cost includes any watered stock, that the fair value would represent its cost less the watered stock.

Com'r PROUTY. That is to say, you would include what money has actually been invested in the land?

Mr. BAER. Actually invested; I would further inquire what, under conditions, had been the increase of property, so as to make the investment more profitable; as, for example, if we have a right of way
1291 in the city of Philadelphia, as we have down to Willow street, the cost is very little; it is worth many millions of dollars and would cost twenty millions to replace under any conditions. Well, now, I should not say that the cost, the present value of that, was the original cost, when it was built in the outskirts of a city over right of way that we had acquired and over which since '33 the city has opened streets and it is now a built-up city. But those are questions that when you put them to me to figure, I don't believe any expert in the world could give a fast rule. Do you think they could—a hard and fast rule? I know of nothing more troublesome than market value. We know that is so when you call witnesses to testify in damage cases as to the market value of a farm. Nearly everybody has a different view of it, and I do not know that I would like to be called upon to testify to market value. I do not know of any more difficult problem, even under the rules of law that we, as lawyers, prescribe to witnesses on the stand.

1292 Com'r PROUTY. You say you are entitled to earn four per cent on the value of your property?

Mr. BAER. Well, I say on the value of the property as represented by the securities to-day, asserting that the securities to-day have been honestly and squarely issued and represent actual property acquired and which to-day, on any appraisal that would be made in gross or in detail, would prove to be worth what the capitalization shows them to be.

Com'r PROUTY. What would you say to four per cent on the market value of those securities?

Mr. BAER. No; I do not agree to any such proposition, because we would do then what we have never done; you would have to give us—in order to do that—take the market value of the securities and pay four per cent—you would have to pay us—we would have to raise the rates to enable us to earn money. For example, we have some mortgages that were issued at a seven-per-cent rate and we have extended at 3.30, which is a very low rate of interest, and if you take the market value of our stocks to-day you would find that we have at no time in the past, since the reorganization of the company, in December, 1896, earned any such figure.

1293 Com'r PROUTY. Mr. Baer, there are several different kinds of Reading stock on the market, are there not?

Mr. BAER. Yes, sir.

Com'r PROUTY. Which stock is it that may be said to fix the market value of your securities—have you preferred stock?

Mr. BAER. We have first preferred, second preferred, and common stock. We have twenty-eight millions of first preferred, entitled to a dividend of four per cent; forty-two millions of second preferred, entitled to a dividend of four per cent; and we have seventy millions of common stock.

Com'r PROUTY. Now, at the time of your reorganization, in 1896 or 1897, do you know what the value of that stock was—what the total value of that stock was—on the basis of its market quotation?

Mr. BAER. I do not know. I can only tell you what the value is, based on the value of the property. As to what people would give at the time, I do not know.

Com'r PROUTY. Do you know how much the market value of that stock increased from 1897—the highest point it touched in 1897 to the highest point it touched in 1902—all the different stocks of your company?

Mr. BAER. I can not tell you that. In general, the first pref-

1294 erences run—I remember they are issued in shares of fifty—the first preferences will run eighty-five to ninety per cent, the second preferences have been running about seventy, and the common has been running at twenty-eight to thirty-two or thirty-three, or whatever it may be.

Com'r PROUTY. How were those prices in 1897—what were the corresponding prices in 1897?

Mr. BAER. The preferences ranked fully as high. There was very little sold in the market, because it was security holders and bondholders—in the reorganization. The preferences were issued in payment of different classes of liabilities and adjustments, and there was very little on the market, but that would not be—with deference to you—any fair rule. Here was a bankrupt company——

Com'r PROUTY. I was not suggesting what the fair rule would be. I was asking you.

Mr. BAER. I was wondering about it. It certainly would not be a fair rule.

Mr. SHEARN. Mr. Baer, you instanced this Willow street right of way you have, that cost you little or nothing and which is now worth fifteen or sixteen millions. Why should the people buying coal

1295 pay you any interest on that great increase in value?

Mr. BAER. I suppose if John Jacob Astor or his father bought some property in the city of New York at a trifle, and now it has become very valuable, the present tenants should not pay any more rent for it than a reasonable rent on what Mr. Astor paid for it originally. Is that your proposition?

Mr. SHEARN. That is not my proposition at all. I should say it differs from my proposition very much. You said to Commissioner Prouty that you thought the fair value of a property ought to be taken into consideration in fixing a proper rate of interest, and that, therefore, a proper charge for coal, and you amended that by saying that where you had acquired property for little or nothing and it had, in the course of years, enormously increased in value, you thought you ought to be permitted to charge more for coal in order to pay interest on stock, the value of which was based, not on what the property was worth when the stock was issued, but what it was worth after all these increases, with which you had nothing to do.

Mr. BAER. I said nothing of that kind. I said that stockholders are entitled to a fair return on their investment, measured by the value of the property. I did not say, you take the Willow street prop-
1296 erty and appraise it at fifteen or twenty millions. I gave that as an illustration of how values increase. What proportion it is fair to take into account I do not know. I repeat the proposition and if it is not a sound one it must be ruled out, that believing as I do that the capitalization of the Reading system is fair and honest; that the stockholders of the Reading Company have a right to get a reasonable return on all their investments, and that at least they ought to have four per cent on their stock, and that if the rate of freight on anthracite coal is materially reduced it will not be possible for the present management at least to earn a sum of money that will approach that. We have never done it in the past and I do not believe that under present conditions it would be possible for years to come to pay a dividend on seventy millions of this stock. The hope of my administration is that within the next year or two I may be able to pay four per cent on the first and second preference stocks. If I do that I think I shall have accomplished something for the stockholders of the Reading system. Really I can say no more on that.

Mr. SHEARN. You spoke of an expense of two million dollars that the railway had been put to in going around Reading.

1297 Mr. BAER. I was giving an illustration——

Mr. SHEARN. And the enormous expense at Philadelphia.

Mr. BAER. Yes, sir.

Mr. SHEARN. What has that got to do with the price the Philadelphia & Reading Coal & Iron Company should charge consumers for coal?

Mr. BAER. I submit, gentlemen of the Commission, that I did not use that illustration in reference to the price of coal. I was speaking of the rate of freight, was I not, that we are entitled to charge for the transportation of anthracite coal, and I cited the fact how expensive from year to year it is, both by reconstruction and new construction—here is a new drawbridge to be built to cost a half a million right here at your city and there are new wharves and other things by reason of the development of population, which are constantly increasing. We are putting down new

tracks and getting new facilities, so that the railroad expense in a thickly settled country like this is an ever increasing one and it is because of that that I suggested it as one reason why it was not practicable to reduce the freight rate. I was not speaking of the price of the coal.

1298 Mr. SHEARN. The rate of freight on anthracite coal is a mere name. It does not mean anything, does it, under your method of operation? The rate you get for transporting anthracite coal for the Reading Coal & Iron Company is based entire on what the Reading Coal & Iron Company has left after it pays for the mining of the coal and the selling of the coal?

Mr. BAER. You are greatly mistaken. The Reading Coal & Iron Company pays its freight on all the coal it transports either directly or indirectly, through the consumer; that is to say, when we sell coal in New York we sell it f. o. b., and the coal & iron company has to pay the freight to the railroad. If we sell it from the mine, the freight follows the cargo, you understand, and the purchaser, the consignee pays it there; but in every instance the coal & iron company or the consignees of the coal & iron company pay full rates. There are no rebates given the coal & iron company, even on this purchased coal. Argument was made—and I will state it on the basis of a thirty-five per cent contract. Out of that thirty-five per cent the coal & iron company is able to pay the full freight rate and to pay all the costs of handling its coal—I mean of selling it—to deduct all the risks and still make a profit.

1299 Mr. SHEARN. How does it do it?

Mr. BAER. How do they do it?

Mr. SHEARN. Yes, sir. Coal is only $4. There is only $1.40 left.

Mr. BAER. That is the error you make again in assuming that New York is the world. At New York you sell a small quantity of coal at $4, but at other places the freight rate is much lower and the price much higher. Now the rate in New York, the f. o. b. price, fixes the price for all the coal, and in every month of the year we make a profit on the coal we purchase. Of course, if the coal & iron company sold all its coal in New York instead of only its surplus there, at $4, it could not pay the railroad its freight rate; but suppose you have ninety per cent of the colliery capacity which you sell at a large profit and the other ten per cent you have to sell in New York below the current price, say $4, then the coal & iron company would have only $1.40 with which to pay freight, but in some other places, locally, it will get a much greater profit—that thirty-five per cent will be much more to them, and therefore it is, the coal & iron company is able to pay full freights and still make money.

Mr. SHEARN. You make the other localities pay the higher rate of freight to New York, then?

1300 Mr. BAER. New York is favored because it is competitive. There is no question about that.

Mr. SHEARN. I say, you make the other communities pay the high rate of freight to New York. The difference is made up out of the other communities, then. Is that correct?

Mr. BAER. Not necessarily correct. You can readily see, if coal is sold along the line, the price of coal along the line, the charge of the railroad, the rate of freight, is small; the distance is small, and the coal & iron company will make a profit on their coal. In a general way, it

answer to your question I will say that New York is the favored spot for long-haul anthracite coal; that you get your coal, because of a lower freight rate proportionally and because of competitive conditions here, at a lower price than they do in any other place. That is to your advantage. It is the natural advantage of location to which every community is entitled.

Mr. SHEARN. Well, then, when the return to the railroad company on coal shipped to New York is only $1.25 a ton, representing a loss of about twenty-five cents a ton to the coal & iron company, you make that up in an extra charge of freight to some other locality like Philadelphia, Baltimore or Washington?

1301 Mr. BAER. We do not. We have regular lines of freight. The freight has nothing to do with it. The coal & iron company buy so many tons of coal—say a thousand tons of coal. It may sell nine hundred tons of that coal at a large profit. It may have a surplus of one hundred tons which it sells at a loss, but taking the whole transaction it makes a profit on the thousand tons and is able therefore to pay the full freight rate to the transportation point. That is the whole story.

Mr. SHEARN. Then it does not take out of the proceeds of the sale of coal at New York the funds for the payment of freight to the railway company, but where they are insufficient, it reaches out and takes part of the proceeds of the sale of coal in other communities along the line—at Philadelphia, Baltimore, Washington, or Boston.

Mr. BAER. It buys the coal of the colliery. It must take all that coal. At the end of the month it sees what has been the commercial result of that purchase. It finds as the commercial result on all the coal that it has made a profit—on all of it together—by which it is able to pay the freight and have a considerable sum in its treasury for itself to represent the reasonable profit it makes as a factor in selling

1302 the coal. Now, I can readily understand if, in point of fact, these transactions resulted in a loss to the coal & iron company, that that might amount to a rebate, which would be unlawful, but in point of fact, they do not. That is one of the things I think you have a right to inquire into. I am speaking positively, because I have the statement carefully made up, covering the period of time when these contracts began, because I was about to enter into a new contract, the first one, I believe, I had made under my administration, and before making it—I have not made it yet—before I went into it I wanted to be certain that the commercial feature of it was satisfactory, and I directed the accounting officers to make up a careful statement by the month of the result to the coal & iron company of these purchase contracts, and I find that in the comparatively small number we have—there are only about a million tons—that we made a profit, after paying full freights to the railroad company since November 1st, 1901, of over $300,000, and there was a profit every month; $300,000 was after paying full freights and after taking out a reasonable share of the general expense of selling that coal.

Mr. SHEARN. When the price of coal at tide is as high as $4.50, the thirty-five per cent only amounts to $1.58. Now, $4.50 was the

1303 price in April, 1901, and the price in April, 1902, and subsequent to April 1st, 1901, did the price go up or down?

Mr. BAER. In April, 1901, the price went up ten cents a ton.

Mr. SHEARN. And in April, 1900, the price was $4 a ton?

Mr. BAER. I beg to be excused from testifying to that period of time, because it was not under my administration and I only know in a general way. There are other people that ought to be called to testify to those figures.

Mr. SHEARN. Well, it is obvious to you, is it not, that even when coal is $4.50 a ton at tide water, the coal & iron company loses money on these purchase contracts?

Mr. BAER. It is not obvious to me at all. Why?

Mr. SHEARN. The tariff rate is $1.55, is it not?

Mr. BAER. Yes, sir.

Mr. SHEARN. And thirty-five per cent of $4.50 is $1.58; that leaves three cents margin to cover the cost of selling and to cover the cost of loading into the barges?

Mr. BAER. Oh, no; oh, no.

Mr. SHEARN. Well, there is a cost for loading into the barges, is there not?

1304 Mr. BAER. $1.55; then you get a water rate when you begin to load into the barges, which is twenty-five cents.

Mr. SHEARN. No, sir; when the price of the coal is $4.50——

Mr. BAER. The net return to the coal & iron company for the particular tons of coal sold in New York will be $1.58, and the coal will be $1.55, and there will be only three cents to the credit there, but if from that same colliery a lot of that coal is sold along the line where the freights are low and where coal commands a higher price, when you put that on the side of the ledger and strike a balance you will find that the coal & iron company has made a profit on the transaction, just as any merchant may have to sell some surplus product at less than cost because out of the whole transaction he may have made money.

Mr. SHEARN. To return. I say there is $1.58 left to the Philadelphia & Reading Coal & Iron Company when the coal is $4.50 and paying sixty-five per cent to the mine owner.

Mr. BAER. Yes, sir.

Mr. SHEARN. Out of that $1.58, what items have to be deducted?

1305 Mr. BAER. $1.55 for freight and whatever would be a fair proportion for the expense of selling that coal.

Mr. SHEARN. And also the cost of putting the coal on the barges?

Mr. BAER. The railroad freight covers that.

Mr. SHEARN. But who bears the expense of loading the coal from the cars into the barges?

Mr. BAER. It is part of the transportation.

Mr. SHEARN. Who pays it?

Mr. BAER. It is part of the transportation rate, and the transportation company pays it.

Mr. SHEARN. That is included in the rate of $1.55?

Mr. BAER. Certainly.

Mr. SHEARN. Now, what other items are there to deduct?

Mr. BAER. I do not know, except the general expense—did not I explain that fully? I would say generally, in every instance, the freight

and the fair proportion of the cost of selling the coal, plus whatever commercial risk there is involved in the solvency of the person to whom it is sold—those are the general items going to the debtor side.

Mr. SHEARN. But the coal & iron company also, you say, sets aside five cents a ton for depreciation?

1306 Mr. BAER. That has nothing to do with that. That is after all these things are made up.

Mr. SHEARN. Does it not set aside five cents a ton?

Mr. BAER. Not on purchased coal; no, sir; certainly not. The five cents per ton on coal, I thought I explained, was a depreciation of lands fund. In the mining of coal we are exhausting our capital. Every ton of coal taken out of the mines we own is so much capital taken away, and for the purpose of endeavoring to replace that in some way we take the small amount of five cents a ton on that. If we did not, at the end of fifty years, when these coal lands would be exhausted, there would be no principal representing the estate at all. We call that "The depletion of lands fund."

The CHAIRMAN. Pardon me, Mr. Baer, it covers the point when you say you do not take out that on the coal you purchase.

Mr. SHEARN. That covers it completely. Now, it has been testified here that the sales in the months of April, May, and June, when the prices are low, are very much larger than in the three following months, and that a very considerable proportion of the entire coal that is sold is sold during those three months, when prices are comparatively low; for instance, in 1900, when the price was $4, and in 1901, when it was $4.50.

1307 Mr. BAER. I will have to refer you to Ruley's statistics on that. Generally, I will say that that is a mistake; that the largest quantity of coal is always sold in the winter months and not in the summer months, regardless of price. My own observation and experience during the two years I have occupied the presidency leads me to say that emphatically.

Mr. SHEARN. The Philadelphia & Reading Coal & Iron Company does not make payment to the railroad company for the transportation of purchased coal as other shippers would do, does it?

Mr. BAER. Why don't it?

Mr. SHEARN. For instance, so many thousand tons are shipped of purchased coal during the month of April. Does the Philadelphia & Reading Coal & Iron Company in the following month, or soon thereafter, make a payment to the railroad company?

Mr. BAER. Certainly.

Mr. SHEARN. Covering that freight?

Mr. BAER. Certainly.

Mr. SHEARN. Does it make the payment on the basis of the tariff price?

Mr. BAER. Certainly.

1308 Mr. SHEARN. Or on the basis of what is actually left over?

Mr. BAER. No, sir; on the basis of the tariff price. It invariably pays full tariff rates.

Mr. SHEARN. You say it makes enough money out of the sale of line and other coal to make up the difference?

Mr. BAER. Yes, sir; and to make a reasonable profit.

Mr. SHEARN. Well, one of the reasons why it is able to do that is that the Reading Company makes large advances to it?

Mr. BAER. How, large advances?

Mr. SHEARN. I understood you to say that the Reading Coal & Iron Company was indebted to the Reading Company in the sum of seventy-nine million dollars, on which it only charged one and one-eighth per cent interest.

Mr. BAER. I fully explained that. It represented the value of the property. There was only eight millions of stock and bonds. All indebtedness is held by the Reading Company as representing the actual value of the property, and when the Reading Coal & Iron Company makes any money that it can spare it gives it so much interest—the Reading Company; but the Reading Coal & Iron Company has its own capital.

1309 Mr. SHEARN. But their operations would show a large deficit, would they not?

Mr. BAER. No.

Mr. SHEARN. I say the Reading Coal & Iron Company's operations would show a large deficit if you charged the prevailing rate of interest on this $79,000,000?

Mr. BAER. Undoubtedly. That is what I am complaining of. If we had to pay full interest on that debt, the Reading Coal & Iron Company would show a loss every year.

Mr. SHEARN. If the Reading Company, that owns the stock of the railway company, were not willing to forego three or four per cent interest on this seventy-nine millions, the coal & iron company would not have the funds with which to make up these losses on freight to tide water?

Mr. CAMPBELL. I object to that. There is no evidence that there are losses to the fraction of a cent.

Mr. SHEARN. I do not think it is necessary to go over that again. It has been testified to clearly. When coal is four dollars a ton, there is only $1.40 left for transportation. You say you make that up out of your general business?

Mr. BAER. I did not.

1310 Mr. SHEARN. What you get out of line freight and freight to other points?

Mr. BAER. I did not say that.

Mr. SHEARN. Let us have it right.

Com'r PROUTY. I understood you to say that, taking the average price the Reading Coal & Iron Company receives for all its coal——

Mr. BAER. No; the purchased coal.

Com'r PROUTY. You do not distinguish the purchased coal?

Mr. BAER. We do mix it up.

Com'r PROUTY. Why, then, should it not be on all your coal?

Mr. BAER. I think you are right.

Com'r PROUTY. Taking the average price on all the coal you sell you make a profit out of the coal you purchase?

Mr. BAER. Yes, sir.

Mr. CAMPBELL. The witness was testifying particularly as to purchased coal. When Mr. Baer testified that when he pays the producer

the cost of the coal and pays the freight on the purchased coal
1311 and has sold this identical purchased coal the result of the transaction is the profit, concerning which he has testified.

Com'r PROUTY. I did not so understand.

Mr. BAER. That is what I said distinctly. I will repeat it. We buy coal from a colliery. We take that coal and sell it. The price we receive for the coal we sell of that colliery enables us at the end of the month to pay all freight, all selling expenses, and leaves us a profit on each transaction that so every month we make a profit on purchased coal. That is what I mean.

Com'r PROUTY. That depends on the market in which you sell that coal?

Mr. BAER. Well, we sell it in different markets, as I explained. If we sold only in New York we would not net the freight rate; we would lose; but we do not.

The CHAIRMAN. It amounts to this: The Reading Coal & Iron Company as a seller and purchaser of coal is engaged in a profitable business?

Mr. BAER. That is it exactly.

Mr. SHEARN. So far as purchased coal is concerned?

The CHAIRMAN. Yes, sir.

1312 Mr. SHEARN. But it appears that this purchased coal goes into a common fund of coal and is sold as so much Reading coal, and it was testified yesterday that there was no means of distinguishing between the purchased coal and the company coal. It was brought out very clearly yesterday.

Mr. GOWEN. That was not testified.

Mr. SHEARN. I would like to know whether the Philadelphia & Reading Coal & Iron Company would be able, on its entire business as a seller of coal, to pay the railway company, owned by the Reading Company, the full tariff rates for the transportation of coal if it were not for the fact that the Reading Company advances it, or refrains from charging it the usual rate of interest on the seventy-nine million dollars that the Reading Coal & Iron Company owes to the Reading Company. In other words, if a regular rate of interest were charged, would not the business of the Reading Coal & Iron Company be conducted at a loss every year—with a large deficit?

Mr. BAER. Probably it would; but that would not affect the profit made on the purchased coal in the least.

1313 Mr. SHEARN. You say it costs you about $2 to mine your own coal and put it on the cars, as I understand. Is that correct?

Mr. BAER. Yes, sir; that is correct.

Mr. SHEARN. When you add to that cost of $2 $1.55 you have only five cents left, as I reckon it, with which to meet the cost of selling, the waste, and the cost of putting on board. Do you do a profitable business when you pay the tariff rate of $1.55 and coal is $4 a ton?

Mr. BAER. No; we can not sell——

The CHAIRMAN. That would be $3.55.

Mr. SHEARN. When they are selling at $4 there would be forty-five cents left.

Mr. BAER. I will say, under present conditions, if we had to sell domestic coal, prepared sizes, at $4, we would lose money. We would

make no profit at all, because forty per cent has to be sold at a lower figure.

Mr. SHEARN. When you sell coal at $4.25——

Mr. BAER. Can not you really make those calculations and arguments? You have got the facts. I am very anxious to get through here.

1314 I think those things can be amplified and you can argue it from the data you have.

Mr. SHEARN. I want the facts.

Mr. BAER. Then I give you the basis for all the facts.

Mr. SHEARN. You have just said that when the coal is $4 a ton you operate at a loss if you pay your full tariffs to the railway company.

Mr. BAER. I think we would.

Mr. SHEARN. Now, when coal is sold at $4.25 a ton, do you also operate at a loss if you pay the full tariff to the railway?

Mr. CAMPBELL. Put the question fairly. Do you mean if all the coal is sold——

Mr. SHEARN. If prepared sizes are selling at $4.25 and smaller sizes at their proportion.

Mr. BAER. The error you make is in assuming that the New York price here in the harbor is the price elsewhere.

Mr. SHEARN. Here is a market for seven or eight millions a year.

Mr. BAER. It may be. All our coal is not sold here. There

1315 is only a relatively small proportion of it—not ten per cent of our total output is sold here, and I simply answer your question by saying that the basis you state in your question renders it impossible for me as a business man to answer it intelligently, because it leaves out too many factors.

Mr. CAMPBELL. I object to this line of questions. The witness can not be called upon to make computations.

Mr. SHEARN. You said that in your opinion, in response to one of the commissioner's questions—Com'r Prouty I think—if you reduced the price of coal you did not think it would make any difference in the consumption of coal.

Mr. BAER. That is my opinion; I have no further opinion to express about it.

Mr. SHEARN. Don't you think it would make any difference in the amount of coal bought by the class of people that have to buy coal by the pail or in very small quantities?

Mr. BAER. I only know that we honestly protected the people that bought by the pail last winter and saw in every way that they were given coal at a reasonable price, and I received written thanks from the authorities of Brooklyn and New York for fair dealing towards

1316 those people and the efforts are made to keep down the price of coal to charitable people.

Mr. SHEARN. I say, don't you think, Mr. Baer, that people would buy more coal if the price were cheaper?

Mr. BAER. I can not tell. I suppose poor people buy the coal that is necessary for their comfort without regard to price. If you live in a house you want it reasonably warm. I can not tell whether they would be more saving or more wasteful. I presume if they could get it at a very low price they would buy more.

Mr. SHEARN. You observed that same result, did you not, in March and April of this year? You said you had large quantities in storage that you could not dispose of in March, when the price was $5, but that it all went out immediately when the price was made $4.50 in April?

Mr. BAER. It did not go out.

Mr. SHEARN. The demand increased. Have you still got it in storage?

Mr. BAER. I suppose there are about four hundred thousand tons in storage.

Mr. SHEARN. Where is it stored?

Mr. BAER. Some of it at Port Richmond, some at Schuylkill Haven, and some at the Tamaqua yards.

1317 Mr. SHEARN. That coal is all available to persons that wish to buy now at prevailing rate? It is available for immediate delivery, is it not?

Mr. BAER. No; that coal is not available for immediate delivery, because I am free to say that when I found it was not sold in March I directed that that coal should not be sold except in emergency, because I was afraid, from the unrest existing during the last three weeks in the coal regions that we might have more trouble, and I desired to have a reasonable amount of coal on hand to supply ourselves and the public in case another such dire calamity overtook us. My policy will be, as far as possible, to get several million tons stored at different places, so that in any great calamity the public will be reasonably protected hereafter. I think it is a narrow policy—even if it does cost to do it—not to have coal on hand to meet a contingency such as that that overtook us last summer.

The CHAIRMAN. Pardon me, Mr. Baer, but I think you fully answered his question.

Mr. SHEARN. When did you first learn of this allotment agreement in 1896?

1318 Mr. CAMPBELL. I object to the form of the question because it implies that the parties have met together and entered into a formal agreement about this matter. The testimony discloses no such situation. The testimony of Mr. Baer discloses the fact that the parties in interest got together and ascertained a historical and physical fact, which was that the collieries existing throughout the coal region possessed a capacity of an ascertained quota; that the location of these various collieries was upon the lines of the various railroads in a certain proportion, and that it was ascertained—not agreed—it was ascertained as a fact that in accordance with these percentages the capacity of the collieries was ascertained; and his question is utterly unfair.

The CHAIRMAN. Mr. Shearn, it seems to me your question is objectionable in form. Ask him when he first learned of this arrangement for the distribution of the coal?

Mr. SHEARN. Well, I will ask that question.

Mr. BAER. At that time I was counsel for the receivers—Mr. Dickson and myself were counsel for the receivers—and I recollect that at

1319 a meeting of the receivers at which I was present, something was said about having underrated the colliery capacity in our region.

The CHAIRMAN. He asks when you first learned of that arrangement.

Mr. BAER. I say I do not know. When it was, I do not know.

Mr. SHEARN. The receivership ended in 1896, did it not?

Mr. BAER. It did not end in 1896, because they were not discharged until long after.

Mr. SHEARN. Can you fix this time with reference to the reorganization?

Mr. BAER. The reorganization was December 1st, and it was long prior to that—December 1st, 1896; that is, it took effect December 1st, 1896.

Mr. SHEARN. Do you recollect that you first heard of it February, 1896?

Mr. BAER. I can not say.

Mr. SHEARN. From whom did the information come?

Mr. BAER. I told you I first heard it talked about at a meeting of the receivers. When that was I do not know.

1320 Mr. SHEARN. Who informed you that some kind of an arrangement or understanding had been made?

Mr. BAER. I was not informed at all. I was present at an incidental meeting of the receivers when the question of a fair percentage was talked about——

Mr. SHEARN. When did you learn what the respective percentages were for the different railroads?

Mr. BAER. I can not tell that. I suppose when I saw Ruley's reports—up to the time I was president, I was general counsel and attended the things assigned me, and incidentally I learned some things, but the management of the Reading business was not with me, and I could not recollect what was other people's business and not mine.

Mr. SHEARN. You are aware that there was in January, 1896, a meeting of the presidents of these various railroad companies at which this matter was decided upon?

Mr. BAER. I do not know anything about it.

Mr. SHEARN. You have with you a table of percentages which you said represented this understanding?

1321 Mr. CAMPBELL. Colliery capacity.

Mr. SHEARN. Will you let me see it?

Mr. BAER. I have the monthly reports of the anthracite coal tonnage for 1901, which are at your disposal. I took them off the files. I think they are from January, 1901, to March, 1903. I simply took them out of the files. I promised, I believe, to give the Commission the reports of the different companies. Here they are. [Producing papers.]

The CHAIRMAN. Those are the reports of the Reading Company?

Mr. BAER. The Reading Company and all the companies—the railway and the coal & iron company, with the appendix and everything appended to it.

Mr. CAMPBELL. Please mark that, filed for identification, in connection with Mr. Baer's testimony.

Mr. BAER. There are five reports of the Reading Railway Company, together with the report of the coal & iron company.

Mr. SHEARN. I shall offer those reports in evidence, and ask to have them marked.

(The reports are marked "Exhibit No. 25.")

Mr. SHEARN. I also offer these tables in evidence.

The CHAIRMAN. The tables can go in as one exhibit.

1322 Mr. SHEARN. Yes, sir.

The CHAIRMAN. And the reports as one?

Mr. SHEARN. Yes, sir.

(The reports are marked "Exhibit No. 26." These reports cover all the months from January, 1901, to March, 1903, excepting only the strike months of June, July, and August, 1902.)

Mr. SHEARN. Prior to November, 1900, you did your best to live up to that allotment, did you not?

Mr. BAER. I can not answer that. I was not in authority prior to 1900. I was giving only hearsay as to that.

Mr. SHEARN. Have you been present at any meeting when different allotments have been made?

Mr. BAER. No.

Mr. SHEARN. Do you know whether any meeting has been held when this agreement has been abrogated?

Mr. BAER. I have no knowledge on the subject.

Mr. SHEARN. Do you know whether there has been in effect an allotment agreement or percentage agreement since January 1st, 1901?

Mr. CAMPBELL. I object to the form of the question——

1323 Mr. BAER. I know there has not been.

Mr. CAMPBELL. I object to the form of the question designating this as an agreement.

Mr. SHEARN. You say Mr Harris is connected with your system?

Mr. BAER. He was my predecessor in office.

Mr. SHEARN. Is he connected with the system now?

Mr. BAER. He is a director and member of the executive committee.

Mr. SHEARN. Well, Mr. Harris testified before the Industrial Commission in February, 1901, and was asked this question and made this answer: "Don't you recognize that you have a certain percentage of the market and that you are not to exceed that percentage, so as not to encroach on the supply the other roads shall take to market?—Answer. Yes, sir."

Mr. BAER. Well, that is for him to say.

Mr. SHEARN. Is that a fact or is it not a fact?

Mr. BAER. So far as I know, it was not a fact. I do not believe it was a fact. I never heard of it before.

Mr. SHEARN. Mr. Harris was in a position to know.

1324 Mr. BAER. He was president, and if he said that, he is responsible for it and I am not. I was not president at that time. I do not know what he said or thought.

Mr. SHEARN. You also testified yesterday, as I understood you, that there was competition between these companies in the business of selling coal?

Mr. BAER. Yes, sir.

Mr. SHEARN. Now, Mr. Harris being examined at this same time, February, 1901——

Mr. BAER. I shall have to object to that. Why should I be examined as to what Mr. Harris said?

Mr. SHEARN. I wish to refresh your recollection.

The CHAIRMAN. Can you refresh his recollection by reading from a book that somebody else testified so and so?

Mr. SHEARN. I think so. Mr. Kennedy asked Mr. Harris:

"If your company were to operate on the old lines of competition to get out as much as you can, to get as much of the market as you can, the price of coal would be cheaper to the consumer, would it not?—Answer. Probably; yes, sir."

1325 Do you say after hearing that testimony given in February, 1901, that at the time this testimony was given the companies were operating on a basis of competition?

Mr. BAER. I believe they were, notwithstanding what Mr. Harris said.

Mr. CAMPBELL. I object to this.

Mr. SHEARN. You testified yesterday, as I understood you, that there were no consultations held with Mr. Thomas or others to fix the price of coal at tidewater?

Mr. BAER. I said I had no conversation with him since my administration. What my predecessors or other people did, I do not know anything about. I am responsible from April 1st, 1901, when I took the presidency, but I am not responsible for what other people did before that, nor do I know anything about it. It was not my province to know.

Mr. SHEARN. You said that never in the history of these railroads had there been any agreement to fix the tonnage or the price?

Mr. BAER. I said I never had known of any. I do not know of any such agreement to fix the tonnage or price.

Mr. SHEARN. Mr. Thomas was also a witness in February, 1901, before the Industrial Commission and was asked this question——

1326 Mr. CAMPBELL. I respectfully object to this sort of examination—undertaking to lug into this record extracts from a Congressional investigation. It is utterly immaterial and incompetent. If the testimony of those witnesses is desired to be produced before this Commission, let him call them. Do not surreptitiously bring them.

Mr. SHEARN. There is nothing surreptitious about it.

Mr. CAMPBELL. In a legal sense it is.

Mr. SHEARN. This is the ninth volume of the Industrial Commission's report, page 554. (Referring to volume.)

Mr. CAMPBELL. It is secondary—it is tertiary.

The CHAIRMAN. Do you want to impeach Mr. Baer's testimony?

Mr. SHEARN. I have already disclaimed that. I want to refresh his recollection.

The CHAIRMAN. He has said that that was not within his knowledge.

Mr. SHEARN. I thought if I called his attention to what Mr. Thomas said, it would refresh his recollection.

The CHAIRMAN. You are at liberty to show the fact to be other-

1327 wise, but does it show it to read what somebody else said on another occasion?

Mr. SHEARN. I think it would.

The CHAIRMAN. It seems to me you have pursued this particular line far enough.

Mr. SHEARN. This is the first question I have asked this morning governing the matter of consultation about prices. A great many ques-

tions were asked about that by the Commission yesterday, showing a considerable interest in the subject, and it seems to me I might refresh Mr. Baer's recollection. He testifies that he is overwhelmed with the details of these companies and cannot recollect them all.

Mr. BAER. But have not I a right to make this objection, when you say I am overwhelmed—I have not hesitated to testify to anything occurring during my administration, but going back of my administration and asking me to testify to things my predecessors said or did, about which I know nothing—I was not president——

The CHAIRMAN. Ask another question, Mr. Shearn.

Mr. SHEARN. Mr. Thomas in February, 1901, was asked by Mr. Kennedy, of the Industrial Commission, this question:

1328 "Is there not a sort of connection in determining what the price shall be in New York or at tidewater?—Answer. No, I cannot say there is any. There are consultations in regard to it."

Mr. CAMPBELL. I object to it.

Mr. SHEARN. Does that refresh your recollection, whether since January, 1901, there has been any consultation?

Mr. BAER. It does not. I know nothing of such consultations. I was never present at one. Mr. Thomas does not say that I was there, and therefore anything he might say could not refresh my recollection.

Mr. SHEARN. When these independent operators were turned loose, as Mr. Sturges put it, in January, 1903, did that operation involve any profit to the railroad companies?

Mr. BAER. Any profit?

Mr. SHEARN. Yes, sir.

Mr. BAER. How do you mean?

Mr. SHEARN. Did the railroad companies make any profit out of the suspension of those contracts for three months?

Mr. BAER. No; certainly not. How could they?

Mr. SHEARN. The coal & iron company went through the

1329 form, so it was testified, of buying the coal from the independents at the breaker and selling it back to them at tide water?

Mr. CAMPBELL. I object to this for the reason that the testimony to which counsel refers discloses the fact that the papers he mentions are in writing. I object to Mr. Baer being called upon to disclose the contents of a written document which we have refused to present for the time being.

The CHAIRMAN. I do not so understand the question. Repeat the question.

Mr. SHEARN. I will state the question. It was testified by Mr. Sturges that during January, February, and March, 1903, the coal & iron company went through the form of purchasing independent coal at the breaker and selling it back again to the miner at tide water. Now, I ask you whether there was any profit in those transactions to the railroad?

Mr. BAER. I do not know of any such transactions, as you state it. I never heard of it before.

Mr. SHEARN. Don't you know that the coal & iron co. did, during the suspension of those contracts, buy coal at the breakers and sell the same coal back to the independent miner at tide water?

1330 Mr. BAER. No; I do not know anything of the kind. I have explained what that was. We suspended the contract for 90 days and allowed the colliery to sell their own coal.

Mr. SHEARN. Don't you know anything about such a transaction as buying coal from them and selling it back to them?

Mr. BAER. No. Under the contracts we have bought the coal. For the purpose of not destroying the original contracts we have agreed to sell the coal back to them for three months, and they sold it to the public.

The CHAIRMAN. In effect, you suspended the contracts?

Mr. BAER. Yes, sir; but the form it took was not to abrogate the contracts.

Mr. SHEARN. You contracted to buy it from them at 65 per cent of the price at tide water?

Mr. BAER. Yes, sir.

Mr. SHEARN. At what price did you sell it back to them?

Mr. BAER. I can not tell that. Mr. Henderson, manager of
1331 the coal & iron company, you will have to ask for that. He made all those arrangements.

Mr. SHEARN. Was not 50 cents a ton——

Mr. BAER. I tell you the detail was not in my hands and I can not tell.

Mr. SHEARN. You do not know whether fifty cents a ton was paid by the independents to the coal and iron company for every ton for the privilege of having these contracts suspended?

Mr. BAER. I do not know what was paid, but I directed that the price should be so that we would lose nothing.

The CHAIRMAN. Ask another question, Mr. Shearn.

Mr. SHEARN. That would be within the knowledge of Mr. Henderson?

Mr. BAER. Yes, sir.

Mr. SHEARN. These tables put in cover sales made in what territory, Mr. Baer?

Mr. BAER. Everywhere. Those are the total transportation.

Mr. SHEARN. The total transportation?

Mr. BAER. The total transportation. So I have always understood them.

Mr. SHEARN. Including line and tide water?

1332 Mr. BAER. I think the total. I have always so understood.

Mr. SHEARN. That is all.

Com'r PROUTY. Mr. Baer, cases of this sort concern a great many people other than the complainant and defendants. There has been very little said in your examination about the reasonableness of this rate on coal, and I will sometime, before the case is closed, want to ask you some questions as to that. I would as soon do it at some subsequent stage of this hearing as to-day.

Mr. BAER. I would be glad if you would do that. I am very much pressed. As I said, there is a strike here in the harbor, and I am very anxious to adjust it. I am very much pressed. I will be very glad to come at any time that will suit your convenience.

The CHAIRMAN. In view of that statement, it seems fair that Mr. Baer be excused until some other session of the Commission.

Mr. SHEARN. Yes, sir.

The CHAIRMAN. We will take a recess until 2 o'clock.

At one o'clock p. m. the Commission took a recess until 2 o'clock p. m.

1333 AFTER RECESS.

2 o'clock p. m.

The CHAIRMAN. Mr. Shearn, are you ready to proceed?

Mr. SHEARN. Yes, sir. I will call Mr. Thomas.

E. B. THOMAS, a witness called on behalf of defendant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Thomas, you are president of the Lehigh Valley Railroad Company?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. And of the Lehigh Valley Coal Company?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. When did you become president of those companies?

Mr. THOMAS. In December, 1902.

Mr. SHEARN. Prior to that time you were president of the Erie Railway Company?

Mr. THOMAS. Up to 1901.

Mr. SHEARN. How long a time had you been president of that company?

Mr. THOMAS. I had been connected with that company in different capacities, from general manager to president, and chairman of the board, for fifteen years.

1334 Mr. SHEARN. Had you ever been an officer of the Hillside Coal & Iron Company?

Mr. THOMAS. I had been an officer, I think; whether I have been president I do not know. I would not like to make a positive statement.

Mr. SHEARN. The majority of the stock of the Hillside Coal & Iron Company is owned by the Erie Railway Company, is it not?

Mr. THOMAS. I assume it is; yes, sir.

Mr. SHEARN. Were you, prior to entering into official relations with the Lehigh Valley Railroad Company, an officer of the Pennsylvania Coal Company?

Mr. THOMAS. I was one of the directors. I do not think I was the executive officer. At all events, before saying I was, I would have to refer to the record. Do you know there were a great many subsidiary companies, and it is difficult to charge your mind with all these things.

Mr. SHEARN. Practically all of the stock of the Pennsylvania Coal Company is owned by the Erie Railroad Company, is it not?

Mr. THOMAS. The property is owned by the railroad company.

Mr. SHEARN. The stock, I mean?

1335 Mr. THOMAS. I assume that the stock is. I can not testify to that from recollection. I know there are no outside stockholders.

Mr. SHEARN. Do you recollect that early in 1901 the Erie Railway Company acquired the stock of the Pennsylvania Coal Company, don't you?

Mr. THOMAS. The Erie Railway Company did; yes, sir.

Mr. SHEARN. And that ownership has not been divested, so far as you know?

Mr. THOMAS. Not to my knowledge.

Mr. SHEARN. The Pennsylvania Coal Company owned the capital stock of the Erie & Wyoming Valley Railroad Company, did it not?

Mr. THOMAS. I don't think it did. I think some individuals of the Pennsylvania Coal Company held that stock.

Mr. SHEARN. When the Erie Railway Company acquired the stock of the Pennsylvania Coal Company it also acquired the stock of the Erie & Wyoming Railroad Company?

Mr. THOMAS. Practically it did; yes, sir.

Mr. SHEARN. And the Erie Railway Company at the same time also acquired the capital stock of the Delaware Valley & Kingston Railroad Company?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Have you been an officer of the New York, Susquehanna & Western Railroad Company?

1336 Mr. THOMAS. Yes, sir; I have.

Mr. SHEARN. You were its president?

Mr. THOMAS. I was.

Mr. SHEARN. Up to the time when you went to the Lehigh?

Mr. THOMAS. Up to 1901, when I resigned the presidency of the Erie and took the chairmanship of the board.

Mr. SHEARN. The capital stock of the New York, Susquehanna & Western is owned by the Erie Railway Company, is it not?

Mr. THOMAS. Not entirely.

Mr. SHEARN. The control is?

Mr. THOMAS. The majority of it is.

Mr. SHEARN. The owners of the stock of the Erie Railway Company vote the stock or control the stock of the Susquehanna & Western?

Mr. THOMAS. The stock of the Susquehanna & Western was exchanged for stock of the Erie.

Mr. SHEARN. The same persons in control of the Erie direct the policy of the Susquehanna & Western?

Mr. THOMAS. The Susquehanna & Western have a separate board of directors; entirely separate and distinct from the Erie. Its operating officers are the same.

Mr. SHEARN. When the control of the Susquehanna & West-

1337 ern passed to the Erie there was an exchange of shares of the Erie Railroad for shares of the New York, Susquehanna & Western.

Mr. THOMAS. There was.

Mr. SHEARN. A majority of the shares of the Susquehanna & Western were exchanged for Erie shares?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Exchanged with the Erie Company so that the Erie Railroad Company as a corporation became the owner of a majority of the stock of the New York, Susquehanna & Western?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Does the New York, Susquehanna & Western also own the stock of the coal company called the New York, Susquehanna & Western Coal Company?

Mr. THOMAS. I think she does.

Mr. SHEARN. It owns all the stock?

Mr. THOMAS. I can not say as to all. I think there are some minority stockholders, but who they are I don't know.

Mr. SHEARN. It owns a large majority of the stock?

Mr. THOMAS. It owns a majority, I should say.

Mr. SHEARN. What region in the anthracite coal fields are tapped or reached by the Erie Railroad Company?

1338 Mr. THOMAS. What is known as the Lackawanna field—the upper region.

Mr. SHEARN. What is the name of your shipping point at tide water?

Mr. THOMAS. They have what is known as Weehawken; they have also what is known as Edgewater.

Mr. SHEARN. Their terminals are at Edgewater and Weehawken?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. What region is tapped by the Susquehanna & Western?

Mr. THOMAS. What is known as the upper region—Wyoming.

Mr. SHEARN. And its terminals at tide water are where?

Mr. THOMAS. They have terminals at Edgewater, and a good deal of their coal goes to Weehawken. It is shifted back and forth a good deal.

Mr. SHEARN. Their terminals are the same terminals as the Erie have?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Are you able to say what percentage, approximately, of the workable anthracite fields is controlled by the Erie Railroad Company, through ownership of stock in the companies I have named—

1339 Hillside Coal Company, Pennsylvania Coal Company——

Mr. THOMAS. The proportion of unmined coal, do you mean?

Mr. SHEARN. Yes, sir.

Mr. THOMAS. No; I am not able to state that fact. At best it would be an estimate of a mining engineer, or a guess; that is all anybody could do.

Mr. SHEARN. Do you know what percentage of the coal carried, of the anthracite coal carried is carried by the Erie Railroad Company, under ordinary conditions, year in and year out?

Mr. THOMAS. The Erie Road itself, or the Pennsylvania and Erie, or the Erie and Susquehanna?

Mr. SHEARN. No; the Erie, through its control of the Hillsdale Coal & Iron Company and the Pennsylvania Coal Company.

Mr. THOMAS. I would say probably somewhere about four million tons.

Mr. SHEARN. And about what is the tonnage of the Susquehanna & Western?

Mr. THOMAS. I should think she would probably move from a million to a million and a half tons. I would not like to make those

1340 statements unless I make them accurate. They are all matters of publication and can be ascertained.

Mr. SHEARN. They are approximately as stated?

Mr. THOMAS. Yes, sir; as they occur to my mind at the moment.

Mr. SHEARN. It has been stated that of the entire unmined supply of coal the Erie owns or controls between five and six per cent. Does that strike you as approximately accurate?

Mr. THOMAS. I have no knowledge of that fact as to coal there may be unmined. That is a good deal like the question as to how big a piece of chalk is—it is a little bit difficult to answer that.

Mr. SHEARN. How large a proportion of the unmined coal do you estimate that the Lehigh Valley Railroad through the Lehigh Valley Coal Company owns and controls?

Mr. THOMAS. I am trying to find that out. I have a commission out on that question now. They have been out four or five months on it now and have not found out yet, so I would not care to state.

Mr. SHEARN. It has been stated that it was sixteen or seventeen per cent.

Mr. THOMAS. I hope we have a great deal more than that, but I don't know.

1341 Mr. SHEARN. From the investigation you have made are you satisfied that you have as much as that?

Mr. THOMAS. I would not like to express an opinion on it.

Mr. SHEARN. What is the average tonnage of anthracite coal on the Lehigh Valley Railroad?

Mr. THOMAS. The tonnage has not been normal for practically three years; about eight million—between eight and ten million tons would probably be the tonnage of the Lehigh Valley in anthracite coal.

Mr. SHEARN. Under normal coditions?

Mr. THOMAS. Yes, sir; under normal conditions, I should say.

Mr. SHEARN. How large a proportion of the anthracite coal transported by the Lehigh Valley is purchased coal?

Mr. THOMAS. Let me see if I can give you an idea on that [after consulting memorandum]. We purchase about two million three hundred thousand tons. That was for the year 1901, which is the only year of late in which we have run full and when there has been no interruption to mining.

Mr. SHEARN. That would be a fair estimate as to years when conditions were approximately normal?

1342 Mr. THOMAS. Yes, sir; I assume it would not vary much from that.

Mr. SHEARN. Do you know how large a proportion of the coal, of the anthracite coal, carried by the Erie Railroad is purchased coal?

Mr. THOMAS. I do not. Those are matters of detail which, since I gave up the active operation of the road, have passed out of my mind, and I have not such recollection as would permit me to testify to it, although I would be glad to if I had it in mind.

Mr. SHEARN. Do you recollect what the output, the annual output of the Hillside Coal & Iron Company was during the years you were connected with it?

Mr. THOMAS. I think somewhere near two million tons, the Hillside property itself. I would not like to make a statement of that kind, however, because to go into matters of figures of that sort I might be inaccurate, and I would like to have my statements accurate.

Mr. SHEARN. According to your recollection, about how much coal did the Hillside Coal & Iron Company purchase from year to year during the period of 1900 on?

Mr. THOMAS. I can not answer that question, Mr. Shearn. I really have not the recollection.

1343 Mr. SHEARN. The stock of the Erie Railroad Company is held by voting trustees, is it not?

Mr. THOMAS. The stock of the Erie?

Mr. SHEARN. Yes, sir.

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Who are the trustees?

Mr. THOMAS. Mr. J. P. Morgan, Sir Charles Tanner, of England, and General Fitzgerald.

Mr. SHEARN. You succeeded Mr. Alfred Walter as president of the Lehigh Valley Railroad Company, did you not?

Mr. THOMAS. Yes, sir.

M. SHEARN. At whose request did you resign the chairmanship of the board of directors of the Erie and become president of the Lehigh Valley?

Mr. THOMAS. At my own.

Mr. SHEARN. That was on your initiative?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. The coal—a large part of the coal of the Lehigh Valley Coal Company, as you have stated, is coal purchased? That coal is purchased under these sixty-five per cent contracts?

Mr. THOMAS. I beg your pardon. I said that we purchased about two million three hundred thousand tons. I didn't say it was a large part.

1344 Mr. SHEARN. I should not characterize it as "large." The amount you do purchase is purchased under sixty-five per cent contracts, is it not?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. That is to say the Lehigh Valley Coal Company buys coal to the extent that you have named approximately of independent miners, agreeing to pay them sixty-five per cent of the prices realized at tide water on prepared sizes?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Those contracts were entered into in or about March, 1901?

Mr. THOMAS. I do not recall the date. I think in 1900 it was—either late in 1900 or early in 1901. I would not like to state definitely.

Mr. SHEARN. You were a witness before the Industrial Commission in February, 1901, and, as I recollect it, you testified that those contracts were then under consideration, and that you expected they would be adopted and be decided upon?

Mr. THOMAS. I think you are correct. I would say now that it was in 1901.

Mr. SHEARN. Early in 1901?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Prior to that time the Lehigh Valley Coal Com-
1345 pany—you don't know anything about the operation of the Lehigh Valley Coal Company prior to that time?

Mr. THOMAS. I would not like to testify to it.

Mr. SHEARN. The Hillside Coal & Iron Company, in 1901, also began to purchase coal under those contracts?

Mr. THOMAS. She had always purchased more or less coal under those contracts, or under prior ones.

Mr. SHEARN. The contracts prior to that time of the Hillside Coal & Iron Company were mainly on a basis of sixty per cent of the tide-water price?

Mr. THOMAS. Some of them were, and some were on a lower basis than that.

Mr. SHEARN. But on and after, say, March, 1901, the coal-purchase contracts of the Hillside Coal & Iron Company became sixty-five per cent contracts?

Mr. THOMAS. The majority of them. I would not care to answer positively as to all of them. There might have been some exceptions.

Mr. SHEARN. The Pennsylvania Coal Company also is a large purchaser of coal, is it not?

Mr. THOMAS. I do not think she is.

Mr. SHEARN. Does it sell its coal to any other company?

1346 Mr. THOMAS. The Pennsylvania Coal Company?

Mr. SHEARN. Yes, sir.

Mr. THOMAS. No, sir.

Mr. SHEARN. The Erie & Wyoming Valley Railroad Company prior to January, 1901, had a great many of these sixty-five per cent contracts, or on or about January, 1901, had a great many of these sixty-five per cent contracts, did it not?

Mr. THOMAS. I never knew that she had any.

Mr. SHEARN. The New York, Susquehanna & Western Coal Company is also a purchaser of coal, is it not?

Mr. THOMAS. I think she is.

Mr. SHEARN. And was prior to January, 1901?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. And prior to January, 1901, it purchased its coal on the basis of sixty per cent contracts, did it not?

Mr. THOMAS. She had some at sixty and she had some less than sixty.

Mr. SHEARN. But after, say, March, 1901, the coal-purchase contracts of the Susquehanna & Western Coal Company also became sixty-five per cent contracts?

1347 Mr. THOMAS. I am not certain about that. My recollection is—and it is rather shadowy—that they had some contracts that might have what you might call the favored nation clause—that if a higher rate was paid to anybody else they were to be entitled to the same.

Mr. SHEARN. Was that arrangement made under your jurisdiction?

Mr. THOMAS. No, sir; prior to my administration.

Mr. SHEARN. The Hillside Coal & Iron Company is a purchaser of the coal of the Delaware & Hudson Company, is it not?

Mr. THOMAS. I could not testify as to that. I have been out of there some little time and out of the operation some little time and could not testify as to that.

Mr. SHEARN. Was it not a large purchaser of Delaware & Hudson coal during your administration?

Mr. THOMAS. No, sir; it was a large transporter of Delaware & Hudson coal to tide water during my administration.

Mr. SHEARN. You mean the Erie Railroad Company was a large transporter of Delaware & Hudson coal?

Mr. THOMAS. Yes, sir.

1348 Mr. SHEARN. Did it transport that coal under contract with the Delaware & Hudson Company?

Mr. THOMAS. It transported it under the tariffs published from time to time.

Mr. SHEARN. Don't you recollect that there was a contract providing for the rate of transportation of the Delaware and Hudson coal between that company and the Erie Railroad Company?

Mr. THOMAS. There was an old contract of that character made somewhere along in the 70's. It expired a good while ago, but how long I can not recall, but I do not understand that that provided for a specific rate, but for a division of the rate between the two railroads. What that was I have no recollection.

Mr. SHEARN. You still remain a director of the Erie Railroad Company?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Are you also a director of the Hillside Coal & Iron Company?

Mr. THOMAS. No, sir.

Mr. SHEARN. The contract between the Hillside Coal & Iron Company—if there is one—and the Delaware & Hudson Company has not come under your observation?

Mr. THOMAS. I would not know of that. I am not a director of the latter company.

1349 Mr. SHEARN. You could identify such a contract if shown you?

Mr. THOMAS. I don't know.

Mr. SHEARN. Will you look at this?

Mr. THOMAS. I would not like to testify about that.

Mr. CARR. Mr. Shearn, that contract was made long after Mr. Thomas ceased to be president of the Erie and ceased to be connected with its active operations.

Mr. THOMAS (after examining paper). I could not give you any information on that contract, Mr. Shearn; it was after I ceased to be an active officer of the road.

Mr. SHEARN. The Lehigh Valley Railroad Company transports the coal of Coxe Bros.?

Mr. THOMAS. No, sir; it does not.

Mr. SHEARN. Well, the coal from Coxe Bros.' mines comes to tide water over the Lehigh Valley Railroad or its track?

Mr. THOMAS. Over its tracks; yes, sir.

Mr. SHEARN. The Lehigh Valley Railroad has a trackage contract with Coxe Bros.?

Mr. THOMAS. The Lehigh Valley Railroad Company leases to Coxe Bros. the right to run its trains from its mines to tide water.

Mr. SHEARN. And Coxe Bros. furnish the rolling stock?

1350 Mr. THOMAS. They furnish the rolling stock and motive power and train crews.

Mr. SHEARN. That is a written contract, is it?

Mr. THOMAS. I assume it is. I have not seen it. It was before my administration.

Mr. SHEARN. Does the coal from John Markle's colliery come over the Lehigh Valley Railroad?

Mr. THOMAS. Yes, sir; it does.

Mr. SHEARN. Is that coal purchased by the Lehigh Valley Railroad Company?

Mr. THOMAS. No; the Lehigh Valley Railroad sells the coal for Markle & Company as a factor and receives a commission from Markle & Company, Mr. Markle fixing the price at which the coal shall be sold. We have no voice in that.

Mr. SHEARN. I am speaking now of coal mined by John Markle at his collieries. That is sold by Markle to whom? To the Lehigh Valley Coal Company?

Mr. THOMAS. Not always. Markle & Company ship their coal to any point they may see fit and such as comes to tide water is sold for their account at prices fixed by them, by the Lehigh Valley CoalCompany.

Mr. SHEARN. You simply act as a factor?

1351 Mr. THOMAS. As I answered your first question on that, they are a factor.

Mr. SHEARN. You get a commission for selling the coal?

Mr. THOMAS. We do.

Mr. SHEARN. What is the amount of the commission per ton?

Mr. THOMAS. I think it is about twelve cents for selling the coal and guaranteeing the collection.

Mr. SHEARN. Is that about the average cost of selling anthracite coal at tide water, according to your observation?

Mr. THOMAS. I do not know about other companies, but it is not the cost of the Lehigh Valley Company to sell it. We have our own organization and it sells its own coal.

Mr. SHEARN. What do you find that it costs the Lehigh Valley to sell its coal?

Mr. THOMAS. About six cents a ton.

Mr. SHEARN. And that includes bad debts?

Mr. THOMAS. Yes, sir; to be accurate about that, for the last

1352 six or seven months it has been about 5.7 cents.

Mr. SHEARN. The coal of the Erie—the Erie coal is sold by Williams & Peters, is it not?

Mr. THOMAS. I believe it is. I do not know that all of it is, but the greater part of it is.

Mr. SHEARN. Do you know about how much a ton Williams & Peters receive for selling coal?

Mr. THOMAS. I think there is a commission on amount of money received, but I am not certain about that. The situation is materially different between them in many respects. They pay the Erie Railroad Company for the entire sales of coal on a specific day of the month, whether that is collected or not.

Mr. SHEARN. They guarantee the sales?

Mr. THOMAS. Yes, sir; no matter what it costs the Lehigh Valley to sell it, that would be no criterion of the cost for the work they perform for the Erie.

Mr. SHEARN. Do you know what it amounts to per ton?

Mr. THOMAS. I have not that in my mind.

Mr. SHEARN. Do you know whether it is as much as you charge Markle for selling his coal—that is, twelve cents?

Mr. THOMAS. There are a great many different markets they

1353 sell in, western markets, in which the Erie has no facilities, which

affects the cost of that, and it would be a varying cost. I could not express an opinion on that, Mr. Shearn. If I had positive knowledge I would be very glad to enlighten you.

Mr. SHEARN. Were you present, Mr. Thomas, at any of the conferences between the railroad presidents and the committee of independent operators in Philadelphia at the end of 1900 and early in 1901?

Mr. THOMAS. I was present at meetings of the officers of the coal companies and the independent operators.

Mr. SHEARN. They are the same gentlemen who are presidents of the railroad companies?

Mr. THOMAS. Sometimes; sometimes we differ very materially.

Mr. SHEARN. You recollect, do you, that the committee of independents was composed of Mr. William Connell, Mr. Kemerer, and Doctor Howe?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. They made representations to your committee urging that they were entitled to larger prices for their coal?

Mr. THOMAS. They did.

1354 Mr. SHEARN. And that matter was discussed at some length at those different conferences?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. And at the last conference a conclusion was finally reached?

Mr. THOMAS. Yes, sir; there were a good many meetings about it.

Mr. SHEARN. What was the conclusion?

Mr. THOMAS. The conclusion was to allow them sixty-five per cent for their coal.

Mr. SHEARN. And it was subsequent to that last meeting that these new contracts were entered into that I have been speaking about?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. You were present, Mr. Thomas, at a conference between the presidents of the coal-carrying companies in 1896, were you not?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. All of the anthracite coal roads were represented at that conference, were they not?

Mr. THOMAS. I do not recall who were there, but I assume that they must have been.

Mr. SHEARN. Did you have any part in arranging for that conference?

1355 Mr. THOMAS. I did not.

Mr. SHEARN. How did it come about that you went to it?

Mr. THOMAS. I can not recall that question. It happened seven years ago, and seven years is a good while in New York, especially with busy people.

Mr. SHEARN. What was the subject-matter under discussion at that conference?

Mr. THOMAS. Well, our terminals were very much congested with coal standing around. Our individual operators were complaining that they were not getting a fair deal and that we were favoring our mines, and it was with reference to those questions that the conference was held.

Mr. SHEARN. Was there anything said at that meeting about arranging upon any allotment of the tonnage among the different railroads?

Mr. THOMAS. Of the production of coal?

Mr. SHEARN. No, sir; of coal to be carried?

Mr. THOMAS. A tentative plan was suggested, to be based on colliery production, which was figured out about as the percentages have been published from time to time.

Mr. SHEARN. It was decided, was it not, that owing to condi-
1356 tions of the trade it was desirable that during the summer months of each year, for instance, that there should be some uniform control by the railroads over the number of cars to be sent to the different collieries?

Mr. THOMAS. No, sir; hardly. It was suggested that as the amount of coal to be transported might be in about those proportions. That was a tentative plan and was never carried out and never lived up to.

Mr. SHEARN. Before we come to that—was it agreed upon at this meeting——

Mr. THOMAS. I do not understand that any agreement of that kind was entered into.

Mr. SHEARN. Was it not even reduced to writing?

Mr. THOMAS. No, sir; I am very certain it was not. At least I have no recollection of it being reduced to writing.

Mr. SHEARN. Certain percentages of the coal tonnage were discussed—percentages for the different railroads?

Mr. THOMAS. Certain facts as to what tonnage each party had transported for a good many years was discussed.

Mr. SHEARN. And it was discussed as to whether those percentages should be adhered to by the railroads represented at that conference?

Mr. THOMAS. Like a good many other freight meetings, there were a good many suggestions of different kinds.

1357 Mr. SHEARN. You recollect the meeting when these percentages of the coal tonnage were discussed and when it was decided by those present, with the exception of the Delaware & Schuylkill, the Coxe Bros.' road, that they should be adhered to for the future?

Mr. THOMAS. That was suggested; yes.

Mr. SHEARN. And those percentages were agreed upon to be adhered to by the presidents who were there assembled, were they not, at that time?

Mr. THOMAS. Well, tentatively, possibly; not absolutely.

Mr. SHEARN. When the meeting broke up, there was an understanding among you all that those percentages were to be adhered to, was there not?

Mr. THOMAS. I think possibly there was, unless some fellow thought he could get away from it and do a little better for himself.

Mr. SHEARN. Did you not at that meeting come to an understanding between yourselves that you were in honor bound to endevor to live up to?

Mr. THOMAS. I do not know of any honor in regard to agreements on freight matters.

Mr. SHEARN. Accepting that qualification and making the necessary allowance that should be made for that element, had you not,
1358 when the meeting broke up come to an agreement as to the percentages of tonnage that should be carried by these railroads in the future?

Mr. THOMAS. There was a tacit understanding to that effect, possibly.

Mr. SHEARN. The meeting was not a silent one, was it?

Mr. THOMAS. No; you don't get that number of railroad men together and keep them silent.

Mr. SHEARN. Do you recollect that the allotment for the Erie was four per cent?

Mr. THOMAS. I think that was the amount that was discussed.

Mr. SHEARN. And for the Reading 20.5?

Mr. THOMAS. Yes.

Mr. SHEARN. And for the Lehigh Valley 15.65 per cent?

Mr. THOMAS. I could not say as to that. I can not carry all those in my mind; it is so long ago.

Mr. SHEARN. When you testified upon that the last time you said you could not speak accurately for the Lehigh Valley, but that that was your recollection of the percentage?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Do you recollect that the proportion for the Delaware & Hudson was 9.6 per cent?

1359 Mr. THOMAS. I do not recall it.

Mr. SHEARN. Or that the proportion of the Ontario & Western was 3.10?

Mr. THOMAS. I do not recall.

Mr. SHEARN. And for the Delaware, Lack'wan'a & Western it was——

Mr. THOMAS. I presume I have a memorandum of that that could be referred to.

Mr. SHEARN. Could you send to the secretary of the Commission the memorandum of what those percentages were that were discussed?

Mr. THOMAS. Yes, sir; I have no dispute on those you read, but I recollect very distinctly they didn't come within the 100 per cent.

Mr. SHEARN. Have you kept yourself informed as to the percentage of coal carried by those roads I have named since that time?

Mr. THOMAS. Only as my attention is called from time to time to the statistics made out as to coal transported.

Com'r PROUTY. Commissioner Clements and I do not under-

1360 stand what you meant by your last answer—that they didn't come within 100 per cent.

Mr. THOMAS. My recollection is that there was not enough in 100 per cent to go around allowing each road the amounts that were discussed.

Com'r PROUTY. You mean that the sum of all your percentages agreed upon made more than 100 per cent?

Mr. THOMAS. Not the percentages agreed upon, but the percentages discussed.

Mr. SHEARN. I am talking about the percentages agreed upon.

Mr. THOMAS. There were none agreed upon.

Mr. SHEARN. You said they were tacitly understood.

The CHAIRMAN. What was that understanding?

Mr. THOMAS. It related entirely to transportation.

The CHAIRMAN. Had it anything to do with the amount to be mined?

Mr. THOMAS. No, sir; absolutely nothing. Mr. George B. Roberts stated emphatically at that meeting he would not consider any agreement at all that covered the amount of coal to be produced, and I seconded that statement heartily.

Com'r PROUTY. How could they mine it if they could not get it to market?

1361 Mr. THOMAS. I think they had no difficulty in getting it to market. They never did. There was no limit whatever on the amount to be produced.

The CHAIRMAN. What was the understanding?

Mr. THOMAS. That the amount of coal that was to be carried to market by the various railroads; that they would endeavor to carry certain proportions based upon the colliery capacity of their various mines.

Com'r PROUTY. And would not carry any more than that per cent?

Mr. THOMAS. That was the understanding, but it was not observed—like all freight understandings; you know how they work.

Com'r PROUTY. The purpose of that must have been to limit the amount of coal taken to market to be sold there.

Mr. THOMAS. No, sir; I do not understand it so. The great object was to obviate the complaint of individual operators that when the markets were dull we gave an undue preference to our own mines.

Com'r PROUTY. The purpose was not to restrict the quantity of coal which went to market and thereby maintain a higher price?

Mr. THOMAS. No, sir.

1362 Com'r PROUTY. You were simply considering the facilities of the railroads that transport this coal?

Mr. THOMAS. Yes, sir.

Com'r CLEMENTS. How could that have been carried out and the number of cars fixed by them for each colliery without having the effect of limiting the coal to be sent to market?

Mr. THOMAS. The best answer to that is that it was never carried out.

Com'r CLEMENTS. That is another fact.

Mr. THOMAS. It has a very important bearing.

Com'r CLEMENTS. That was not in accordance with the understanding.

Mr. SHEARN. From the figures that have been discussed here this morning and which were discussed yesterday, it appears that these percentages have been very closely followed or observed, or at any rate that the amount of coal transported has a striking correspondence with those percentages since 1896 and down to the abnormal conditions produced by the strikes.

Mr. GOWEN. I object to that question.

Mr. THOMAS. If you will turn to my testimony before the Industrial Commission, that will answer the question as well as I could at the present moment.

1363 Mr. SHEARN. Do you not know or don't you know that the tonnage of these roads I have mentioned since 1896 down to the period of the strike corresponded very closely with the percentages that had been agreed upon?

Mr. THOMAS. Yes; I will say that, and that is the result of natural conditions. It relates to and is brought about by commercial conditions,

by the location of the roads and the communities which they serve and their ability to produce. That is the result largely of long contention between them in which it has settled down to definite lines. The tonnage produced and transported has gradually sifted itself down to pretty well-defined lines. It is an old industry, and not a new one, and this has a great deal to do with the channels through which it operates and produces very slight variations in the amounts; and this gave rise in the minds of many, possibly in yours, to the idea that that is an artificial control. It is more largely a natural result of the industry. It is due more largely to commercial conditions, location of the colleries, and character of the fuel than anything else.

Mr. SHEARN. You do not recollect holding any subsequent meeting at which it was decided not to observe those percentages?

1364 Mr. THOMAS. If a man is not going to observe his agreement he does call a town meeting to discuss it.

Mr. SHEARN. You say business has settled down into pretty well-defined channels and the percentages and the similarity between the percentages is due to that. It is also due, is it not, to the fact that the railroads recognize that the business has gradually settled down into these channels and do not bestir themselves to change those conditions?

Mr. THOMAS. I recognize this, as having the responsibility for those properties, that I might go and raid the territory of my neighbor and secure a little additional tonnage and get a temporary advantage, but I also recognize the fact that eventually he would recoup himself and it would eventually result in the bringing down of the total rate.

Mr. SHEARN. And in bringing down the price of coal?

Mr. THOMAS. Not necessarily.

Mr. SHEARN. When you were examined before didn't you say it might result in bringing down the price of coal?

Mr. THOMAS. I don't know; it might bring down the rate and possibly the price of coal.

1365 Mr. SHEARN. That is not the reason—because you don't reach out into others' territory others will not reach into your territory, but it is not the reason we are concerned with here. It is the fact whether you do actively bestir yourself to change these channels of trade which you say have grown up, and, as I understand it from your testimony of to-day and on other occasions, you do not do that or believe in doing that.

Mr. THOMAS. I do not believe in creating unnecessary competition.

Mr. SHEARN. And you have testified that the public have more reason to fear competition and the results of competition than they have to fear high freight rates.

Mr. THOMAS. I think unrestrained and unrestricted competition is the most dangerous thing the country could be exposed to.

Mr. SHEARN. And in the guidance of the property you have that theory in mind and so manage your property as to carry out that idea?

Mr. THOMAS. I try to manage the properties conservatively with regard to the stockholders' and the public interests.

1366 Mr. SHEARN. Believing that competition between those companies is a bad thing, you endeavor to manage the properties under your control so as to avoid such competition?

Mr. GOWEN. I object to that.

The CHAIRMAN. Won't you put that question again, Mr. Shearn?

Mr. SHEARN. I will ask the stenographer to repeat the question.

(The question was repeated by the stenographer.)

Mr. THOMAS. Undue and reckless competition, yes.

Mr. SHEARN. That is, competition which appears to you to be reckless?

Mr. THOMAS. I do not think I will be justified in exposing the properties under my charge to reckless competition or in creating it, for we would have unfortunate financial results.

Mr. SHEARN. That you avoid?

Mr. THOMAS. That I try to do, but I have not been successful in it.

Mr. SHEARN. Do you carry out that same idea in selling coal?

Mr. GOWEN. Do not answer that question. I know, however, Mr. Thomas would rather answer it.

Mr. THOMAS. I would prefer to.

1367 Mr. GOWEN. I would say to counsel that that relates to transactions between the Lehigh Valley Coal Company and others, and is a matter which this Commission can not investigate.

The CHAIRMAN. Mr. Shearn, had you better not come at it direct, with a direct question? The form of that is objectionable.

Mr. SHEARN. Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business of selling coal in accordance with those same ideas, so as to avoid what you regard as reckless competition?

Mr. GOWEN. I object to that for the reason that it relates to the business of and the sales of the Lehigh Valley Coal Company's coal, and has nothing to do with the question of the reasonableness of the rates charged for coal and the coal being sold after it reaches tide water.

The CHAIRMAN. It only presents the question in another form which has been decided here, and the objection is overruled. The question may be answered.

1368 Mr. BROWNELL. I would like to make a suggestion. The question is whether the witness enters affirmatively into reckless competition, or any other kind, not whether or not the witness has entered into any competition or taken any steps to restrain competition. That is a very different proposition. Now, it has been suggested by counsel that he has a right to show that the respondent companies have taken steps or have entered into combinations to restrict and restrain legitimate competition. Now, it is suggested by the inquiry that there is something wrongful and that he will attempt to show as supporting some of his claims here that respondent companies have not seen fit to take affirmative steps, to build into different localities, or do other things in the way of aggressive competition. I never until now heard it suggested that that can be the basis of wrong either in itself or as the basis of a violation of law. I do not think this inquiry should be permitted.

The CHAIRMAN. We adhere to the ruling, Mr. Brownell, and the witness may answer.

Mr. THOMAS. Won't you repeat the question?

Mr. SHEARN. I will ask the stenographer to repeat the question.

1369 (The question was repeated by the stenographer as follows:)

"Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business of selling coal in accordance

with those same ideas, so as to avoid what you regard as reckless competition?"

Mr. SHEARN. What do you say, Mr. Thomas?

Mr. THOMAS. I would say that when I hire a carpenter to do a job I do not like to say what tools he shall use. I am here under the direction of counsel and under his advice.

Mr. SHEARN. If the Commission directs you to answer you will answer, will you not?

Mr. THOMAS. I am under the direction of counsel. You would not like your witness to do that, would you?

Mr. GOWEN. I instruct the witness not to answer that question.

The CHAIRMAN. The objection raised is overruled and the witness has been directed to answer, and notwithstanding that direction he insists upon declining.

Mr. SHEARN. Mr. Thomas, who fixes the price of the coal of the Lehigh Valley Coal Company that is sold at tide water?

1370 Mr. GOWEN. I shall have to instruct the witness not to answer that question.

Mr. SHEARN. You fixed the price of the coal of the Hillside Coal & Iron Company and the Pennsylvania Coal Company that was sold at tide water during your connection with those properties?

Mr. THOMAS. Under the advice of counsel I hope you will excuse me from answering.

Mr. SHEARN. That refers to companies as to which Mr. Gowen is not counsel, and I understand there is no objection to that from counsel.

Mr. BROWNELL. You really do not understand that, Mr. Shearn, do you?

Mr. SHEARN. Do you make that objection?

Mr. THOMAS. I understand counsel to object to it.

Mr. BROWNELL. I supposed that the testimony offered here, as I understand it, is offered as evidence against respondents all together, and when you ask a question of Mr. Thomas relating to the Lehigh Valley matters you do not offer it on the record solely as against the Lehigh Valley Company. If I understand that to be so, and that the testimony given by Mr. Thomas in regard to Lehigh Valley matters is stipulated upon the record as having no bearing on the other respondents——

1371 Mr. SHEARN. No; no.

Mr. BROWNELL. It is hardly fair to say that there is no objection.

Mr. SHEARN. Do you object?

Mr. BROWNELL. Yes, sir; I do.

Mr. SHEARN. I ask the court to direct the witness to answer. Those questions were all put to Mr. Baer and answered according to his ideas without objection. I would be glad to have Mr. Thomas's testimony on that subject, but they seem to object to his giving the testimony.

The CHAIRMAN. If I understand the question, I thought Mr. Baer answered similar questions—perhaps questions not in the same form, but going to the same purpose.

Mr. SHEARN. And no objection was made, and now I put the same question in a different form to this witness and the objection is made. What ruling does the court make?

The CHAIRMAN. The objection is overruled and the witness is directed to answer.

Mr. THOMAS. Under the advice of counsel I respectfully
1372 decline, without discourtesy to the Commission or to anyone else.

Mr. SHEARN. You testified before the Industrial Commission that prices were fixed by consultation.

Mr. THOMAS. I presume very likely I did—consultation and markets.

Mr. GOWEN. Do you think that is an entirely fair way of practicing law?

Mr. SHEARN. I am going to ask several of them. You are warned in advance, because I am going to ask several of them.

Mr. GOWEN. Go on, go on.

Mr. SHEARN. Are the prices of anthracite coal at tide water fixed by agreement between the presidents of these different coal companies?

Mr. GOWEN. I object to the question.

The CHAIRMAN. The objection is overruled and the witness is directed to answer.

Mr. SHEARN. And does the witness decline to answer under the advice of counsel?

Mr. THOMAS. Personally, I will say I would prefer to answer the question.

Mr. SHEARN. I think you would.

1373 Mr. THOMAS. Because there is nothing in it.

Mr. SHEARN. The order of the court that the witness is required to answer, as I understand it, has been given. The witness is directed to answer it, do I understand?

The CHAIRMAN. Yes, sir; and he declines.

Mr. SHEARN. To return a moment to the Erie Railway Company. That is a corporation organized under the laws of the State of New York, is it not?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. When was it incorporated, Mr. Thomas?

Mr. THOMAS. I can not give you the exact date. It was after the receivership.

1374 Mr. SHEARN. November, 1895?

Mr. THOMAS. I think that date is correct; yes, sir.

Mr. SHEARN. The Erie Railroad Company has not, under the terms of its charter, the right to engage, directly or indirectly in the mining of coal?

Mr. BROWNELL. I object to that. The charter will speak for itself.

Mr. SHEARN. I offer a certified copy of the charter in evidence.

Mr. BROWNELL. I would like to ask for what purpose this is offered—on what particular charge or offense this is offered.

The CHAIRMAN. Of course, it does not appear.

Mr. BROWNELL. Unless it appears that it relates to something in this case, I object to its relevancy.

Mr. SHEARN. The relevancy of that evidence is as follows: Among other points it would bring out, which we have had more or less evidence on here, is the question of whether the railroad companies, as railroad companies, are engaged in this business, that being important as
1375 bearing upon the question of what they actually get for transporting coal. The suggestion has been made by counsel, that the rail-

road companies are not engaged in the business of mining coal and not engaged in the business of selling coal, except as to the Delaware, Lackawanna & Western, but that that business is carried on by corporations, the capital stock of which is owned by the railroad companies. Now, it has been deemed to be important before in this case, to find out what are the relations between those companies; first, as bearing on the question, what the actual return is for freight; second, as bearing upon the question whether the rates charged are competitive rates; and third, as bearing upon the question whether these so-called purchase contracts between the coal companies and the indepedent miners are not in reality, after the disguise is slipped aside, contracts for the transportation of coal; and for all those reasons it becomes important to determine whether in reality and in fact the railroad company and the coal company is one and the same thing; whether there is not some reason for the incorporation of these coal companies, whose stock is owned by the railroad companies—whether it is not a device. Now, when you examine this charter,
1376 you may be able to come to some conclusion as to whether the Hillside Coal & Iron Company is a device, whereby the Erie Railroad Company is permitted to engage in mining coal, and you may also come to the conclusion whether these contracts of the Hillside Company and the independent mine owners are contracts for coal, or contracts between the railroad companies and the miners for fixing the rate. For all those reasons, I think it is important.

The CHAIRMAN. It is hardly objectionable to put in evidence the charter of a responding company.

(The charter is marked "Exhibit No. 27.")

Mr. BROWNELL. Counsel has stated that he offers it to show violations of the charter powers of the roads controlling the stock of the coal companies. If it is claimed that the Erie Railroad has no authority to hold stock in the Hillside Company, under the laws of the State of Pennsylvania or New York, I think this Commission will hardly venture into this. That is even more remote than anything else counsel has offered. It seems to me that this has no bearing on any question at issue in this case and counsel, in stating his purpose, states a reason
1377 that is improper and that shows it to be irrelevant and immaterial.

The CHAIRMAN. We overrule your objection, and the copy of the charter will be received in evidence.

Mr. SHEARN. Mr. Thomas, you were asked before the Industrial Commission in February, 1901, as to what the effect of these new contracts you were then contemplating would be upon the freight rate charged to independent operators who did not enter into the contracts with you, and you said:

"I would not like to answer that question because that is a question that has not been decided, what the rate will be on a thirty-five per cent rate. Under the 40 per cent rate, as they now stand, the rates are from $1.15 to $1.40 per ton."

Then you were asked the question:

"So that it would make little difference substantially to the operator whether he has a contract for shipping at 60 per cent of the tide-water price, or whether he has his coal carried by your company for him at his own risk, he selling at tide water? Answer: That would be a very

difficult question to answer, because it has not been decided exactly what the rate will be on the 35 per cent basis."

1378 Did you thereafter decide what it would be?

Mr. THOMAS. I do not recollect as to that. Our freight manager will testify as to that. It is a matter of detail that I have not in my mind.

Mr. SHEARN. Are there operators along the lines of the Erie and Susquehanna & Western who do not sell their coal to a coal company owned by either of those companies?

Mr. THOMAS. I think there are independent operators there.

Mr. SHEARN. Do those operators ship coal over your lines?

Mr. THOMAS. The Susquehanna?

Mr. SHEARN. The Susquehanna or Erie?

Mr. THOMAS. I think they did.

Mr. SHEARN. Do you know whether they were charged the tariff rate, or whether their coal was taken at this same 35 per cent?

Mr. THOMAS. I could not answer that from memory, Mr. Shearn.

Mr. SHEARN. You said at that time that in your opinion there would be some justification for charging an operator who did not sell

1379 his coal a larger price for transportation, because the sales of the man who did sell to you were absolutely regular and that his returns were guaranteed. There was no chance of loss.

Mr. THOMAS. I think a man that ships his own coal independently and individually, the railroads would be justified in charging a higher rate than what might prove to be 35 per cent of what that coal sold for at tide water.

Mr. SHEARN. On account of the losses that the company assumes on coal that it purchases?

Mr. THOMAS. Oh, no.

Mr. SHEARN. Then, for what reason?

Mr. THOMAS. Because if a railroad company can tell with certainty how much transportation it can have and with what regularity it can be furnished, it can do it much cheaper than if it is thrown upon it in irregular and varying quantities and without any control over it.

Mr. SHEARN. As a matter of course, you know you would not be permitted to charge one rate of freight to a man that makes a contract with you and another to another man that does not?

1380 Mr. THOMAS. I do not admit we are doing that. I am simply stating——

Mr. SHEARN. Do you know whether you are doing that or not?

Mr. THOMAS. I assume not. According to my knowledge we are charging tariff rates to everybody.

Mr. SHEARN. Do you know whether you are charging tariff rates and pursuing a scheme of monthly adjustments that will bring the rate to the independent who does not sell his coal down to the same rate as the independent who does sell his coal?

Mr. THOMAS. I do not know of anything of that kind.

Mr. SHEARN. I was referring my question then to the Erie. It appeared in the testimony yesterday that prior to November, 1900, that was the practice of the Lehigh Valley Railroad Company.

Mr. GOWEN. That is not so. That is not a correct statement.

Mr. THOMAS. I have no knowledge of what happened on the Lehigh Valley.

Mr. SHEARN. Mr. Meeker, a coal merchant in this city testified yesterday that prior to November, 1900, he had been paying the
1381 Lehigh Valley Railroad Company the carriage rate of $1.55, and that there had been a monthly adjustment, a repayment to him of the difference between $1.55 and what 35 per cent of the tide-water price would amount to. Was that practiced by the Erie Railroad Company, to your knowledge?

Mr. THOMAS. I have no recollection of anything of that kind.

Mr. SHEARN. Or the Susquehanna & Western?

Mr. THOMAS. I have no recollection of anything of that kind.

Mr. SHEARN. Mr. Meeker also testified that he is at present endeavoring to procure such adjustment from the Lehigh under your administration. Have those negotiations come to your knowledge?

Mr. THOMAS. He notified us of certain claims, which I declined.

Mr. SHEARN. That is, under your administration that same practice has not continued?

Mr. THOMAS. It has not.

Mr. SHEARN. The Erie Railroad Company in February, 1899, entered into agreements with the Guaranty Trust Company, the Temple
1382 Iron Company, the Lehigh Valley, the Central, the Delaware, Lackawanna & Western, the Susquehanna & Western, and the Reading, whereby it guaranteed dividends upon the stock of the Temple Iron Company and the payment of principal and interest on its bonds to the extent of 5.84 per cent thereof.

Mr. THOMAS. It entered into an agreement. I do not recall the exact amounts of the guarantee. It did guarantee an amount.

Mr. SHEARN. It guaranteed dividends on the stock of the Temple Iron Company and the payment of principal and interest on the bonds in some percentage, which you do not recollect?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Has it come to your knowledge since you became president of the Lehigh Valley that at the same time the Lehigh Valley entered into the same arrangement and the same contract whereby it guaranteed dividends and the principal and interest on the bonds in a given percentage?

Mr. THOMAS. It did.

Mr. SHEARN. Do you recollect the Lehigh's percentage was 22.88?

1383 Mr. THOMAS. I do not recollect the per cent, but I assume it was larger than the Erie's.

Mr. SHEARN. Did the entering into those contracts by the Erie & Susquehanna & Western come under your observation?

Mr. THOMAS. Only in a very general way.

Mr. SHEARN. What was the interest of the Erie Railroad Co. and the Susquehanna & Western in guaranteeing the stock and bonds of the Temple Iron Co.?

Mr. THOMAS. To preserve to its road tonnage which it enjoyed and always had enjoyed.

Mr. SHEARN. In other words, there was something on foot that threatened its tonnage, was there?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Was that the proposed building of an independent and competing railroad to tide water?

Mr. THOMAS. Simpson & Watkins and other people down there were threatening to build an independent road and take that tonnage off the Erie. I thought I was justified in doing all I could to preserve that tonnage to our lines.

Mr. SHEARN. And in order to do that, on behalf of the Erie and the Susquehanna & Western, you caused them to enter into these con-
1384 tracts whereby they guaranteed dividends upon the stock and the payment of interest and principal on the bonds which were used to purchase the collieries of Simpson & Watkins?

Mr. THOMAS. I consented to that.

Mr. SHEARN. That was the road known as the New York, Wyoming & Western?

Mr. THOMAS. I do not know what it was called or whether it got as far as that.

Mr. SHEARN. It had got far enough along for you to be willing to commit your companies to that guarantee upon a very large issue of bonds?

Mr. THOMAS. It got far enough along for me to consent to the purchase or guarantee of that percentage in order to preserve to the Erie tonnage it had always carried.

Mr. SHEARN. Did the Erie and Susquehanna & Western, under your administration, pay the Guaranty Trust Co. 12½ cents a ton on all the coal mined from the collieries of the Temple Iron Company, whose tonnage passed over the lines of the Erie and Susquehanna as initial lines?

Mr. BROWNELL. I object to that as irrelevant and immaterial.

The CHAIRMAN. You may answer.

1385 Mr. THOMAS. Under advice of counsel——

Mr. SHEARN. He has not advised you.

Mr. BROWNELL. No.

Mr. GOWEN. We do not press the objection.

Mr. THOMAS. Those guarantees or endorsements on those securities require that if the property does not earn sufficient to take care of the interest on the bonded debt, we will pay up to a certain amount. I do not recall the amount.

Mr. SHEARN. Have you made any payments?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Do you know how much a ton those payments will amount to?

Mr. THOMAS. No, sir.

The CHAIRMAN. Do you know whether the payments equaled the amount of your liability?

Mr. THOMAS. They could not be in excess of it.

The CHAIRMAN. Were they as much or less?

Mr. THOMAS. I could not say as to that without having the figures before me.

1386 Mr. SHEARN. Could you inform the Commission by sending a written communication?

Mr. THOMAS. Yes, sir.
Mr. SHEARN. Will you do that?
Mr. BROWNELL. I object.
Mr. THOMAS. I have no means of getting that from the Erie.
Mr. SHEARN. Have you no means of knowing what the Erie did pay?
Mr. THOMAS. No; I have no means now.
Mr. SHEARN. Not as a director of the Erie?
Mr. THOMAS. I do not think I would have a right to call on the executive officers of the Erie for such information. It would be very unusual for a director to take such a step as that.
Mr. SHEARN. Has the Erie or the Susquehanna & Western Railroad, to your knowledge, had any of the tonnage theretofore customarily passing over its lines, as initial lines, from the collieries of the Temple Iron Company, withdrawn from either of them by reason of failure to carry out any provisions of the contracts with the Temple Iron Company or the Guaranty Trust Co.?
1387 Mr. THOMAS. I do not think so. I never heard of any.
Mr. SHEARN. Were you aware of the plan to make the Temple Iron Company a general selling agency at tide water for all the different railroad companies?
Mr. THOMAS. Yes, sir; I have heard that discussed.
Mr. SHEARN. Did you know of that at the time you consented on behalf of your companies to enter this guarantee?
Mr. THOMAS. I can not say I did at the moment. That was discussed afterwards as a possibility of what might be done.
Mr. SHEARN. Were you in favor of that?
Mr. THOMAS. I was not.
Mr. SHEARN. You are a director of the Temple Iron Company, are you not?
Mr. THOMAS. I am.
Mr. SHEARN. And have been since its organization?
Mr. THOMAS. Yes, sir.
Mr. SHEARN. And regularly attend its meetings?
Mr. THOMAS. If I have no more important engagements in the city, I try to get my $10.
1388 Mr. SHEARN. You get $10?
Mr. THOMAS. Yes, sir.
Mr. SHEARN. How often do they occur—I do not ask that to find out what you get?
Mr. THOMAS. About once a month or once in two months. There is no regular meeting. They are held on call.
Mr. SHEARN. Held on call of the president?
Mr. THOMAS. Or the secretary.
Mr. SHEARN. At 143 Liberty street?
Mr. THOMAS. Not always. They are sometimes held in Philadelphia.
Mr. SHEARN. Do you recollect that the proposition to make that company a general selling agency for all the railroads came before the board of directors to be voted upon?
Mr. THOMAS. It never did.
Mr. SHEARN. The authorized capital stock and bonds of the Temple Iron Company were fifteen millions?
Mr. THOMAS. I believe they were.

Mr. SHEARN. That is, fifteen millions stock and fifteen millions of bonds; and the amount paid for Simpson & Watkins' collieries was approximately six millions?

1389 Mr. THOMAS. I do not recall the figures.

Mr. SHEARN. Do you know how much of the stock and bonds of the Temple Iron Company are outstanding?

Mr. THOMAS. I do not. I would have to refer to the books for that.

Mr. SHEARN. Do you recollect that the amount paid in stock and bonds for the Simpson & Watkins collieries was much less than the total stock and bonds authorized?

Mr. THOMAS. Oh, yes.

Mr. MOOT. One moment, if the Commission please. Mr. Shearn went all over this the other day. I can not see that it has any possible connection with the case. The question has been discussed whether it has or not. This witness has been going over it again. Of course, there could not be any objection to it on the theory that it would harm anybody on our part. It is simply a question of taking up time, and it seems to me that when it goes so far that a member of the Commission has to say, as he did in Mr. Baer's examination, at the finish to-day, that he would like to ask a few questions on the question really on trial, that counsel might change this witness' examination a little.

1390 Mr. THOMAS. Mr. Shearn, will you permit me to make a little statement that may save time for you and for the rest of us?

Mr. SHEARN. Yes, sir.

Mr. THOMAS. In respect to the 65 per cent contracts and the contracts with the Temple Iron Company, discussed here, personally I would prefer to furnish to the world those contracts. They were made under the advice of very able counsel. I believe they are not in conflict with any law, State or national, and are made in pursuance of good business judgment. I think they are unduly magnified in their importance by yourself and your client—with the very best motives—that there is a purpose of concealing something, which there is not. Personally I would prefer to spread those broadcast. But we have counsel, and you, from your own expeaience, very well know that their wishes I ought to regard. It would be eminently improper for me, having counsel, to undertake to disregard their wishes and advice, and believing, as they do, that this is not the proper tribunal before which they should be produced, I know you will excuse me and not needlessly waste your time in this matter.

Com'r FIFER. Do you think the production of those contracts would result in any harm to anybody?

1391 Mr. THOMAS. I do not think so. But there are other parties to these contracts than myself. My own preference would be to give them to the New York Journal and let them publish them.

Mr. SHEARN. We have them and can publish them.

Mr. GOWEN. We have no objection to that.

Mr. SHEARN. I have no fault to find with you for refusing to answer under the advice of counsel, and I am not going to take up your time, or the Commission's time, asking you any more questions as to the contents of those contracts. I am not referring to the contents of those contracts in my last question, which you have answered. The purpose of that question was to bring out whether at the time you entered into

these guarantees or before that you contemplated the acquisition of other collieries in the Lackawanna region than those of Simpson & Watkins.

Mr. THOMAS. That was discussed as a possibility.

Mr. SHEARN. And that was in your mind at the time?

Mr. THOMAS. In a very vague way; there was nothing definite. The reason I make that explanation was because of the fact that there

1392 seems to be an idea in the minds of the public generally that there is something wrong. I do not think there is, and the very able counsel under which they were formulated and put into effect do not think so. They may be wrong.

Mr. SHEARN. That is what we want to know.

Mr. THOMAS. Well, we have plenty or courts for that. God bells them; let them go ahead.

Mr. SHEARN. If they were produced, in my judgment they would furnish competent evidence of a combination and pool.

Mr. THOMAS. That is where you and I differ. I think they would prove to the contrary.

Mr. SHEARN. Of course the document is the best evidence.

Mr. THOMAS. Undoubtedly.

Mr. BROWNELL. We are asking counsel to take the speediest method he can to present it to the court.

Mr. SHEARN. Now, Mr. Thomas, after the New York, Wyoming & Western Railroad project was abandoned, did there come to your knowledge a project on the part of the independent operators in the Lackawanna and Wyoming regions who had not been taken care of by

1393 the Temple Iron Company to build a road from Hawley or Lackawaxen to Rondout?

Mr. THOMAS. On the part of the independent operators?

Mr. SHEARN. Yes, sir.

Mr. THOMAS. No, sir.

Mr. SHEARN. The Pennsylvania Coal Company was a corporation that had a large business, was it not?

Mr. THOMAS. Yes, sir; they had a large business.

Mr. SHEARN. The Erie Railroad paid thirty-two millions for its stock?

Mr. THOMAS. It did, and made an excellent purchase.

Mr. SHEARN. And left a large surplus to be divided among the stockholders of the old Pennsylvania Coal Company?

Mr. THOMAS. I do not know as to that.

Mr. SHEARN. It was a large independent operator?

Mr. THOMAS. It was a large one. What confused my mind was that it was not classed as an independent operator. When you speak of an independent operator, we hardly construe the Pennsylvania Coal Company as being in that position.

1394 Mr. SHEARN. It was once. The Pennsylvania Coal Company owned a railroad connecting its collieries with the Erie?

Mr. THOMAS. The Pennsylvania Coal Company, through trusteeship or ownership in the same interest—I do not know which—owned the Erie and Wyoming Valley Railroad extending from Dunmore to Hawley. It also owned the road from Hawley to Lackawaxen. The latter had been leased to the Erie antedating Mr. Gould's administration. The

tonnage produced was delivered to the Erie at Hawley by the Erie and Wyoming Valley, and had been transported to tide water by it for probably forty years.

Mr. SHEARN. There was dissatisfaction on the part of the Pennsylvania Coal Company with their share of the rate to tide water, was there not?

Mr. THOMAS. Like the buyers, they said it was not enough.

Mr. SHEARN. That was a fact, was it not?

Mr. THOMAS. They would like to have got more for themselves.

1395 Mr. SHEARN. And that was the reason advanced for their proposition to build a railroad to Rondout, was it not?

Mr. THOMAS. I do not know what their reason was. I never went into a discussion of that.

Mr. SHEARN. Did it come to your knowledge that a large number of the independent operators in the Wyoming field had pledged their tonnage to the Erie & Wyoming Valley Railroad which was owned by the Pennsylvania Coal Company for all future time, provided this railroad should be built by the Pennsylvania Coal Company to tide water.

Mr. THOMAS. No, I never heard that. I heard that some independent operators agreed to give some tonnage to the Delaware Valley & Kingston, if it should be built.

Mr. SHEARN. That is the corporate name of the road that the Pennsylvania Coal Company intended to build?

Mr. THOMAS. Yes, sir; from Hawley to a point on the Hudson River.

Mr. SHEARN. On the line of the old Delaware & Western Canal?

Mr. THOMAS. Yes, sir.

1396 Mr. SHEARN. And it came to your knowledge that a number of independent miners pledged their tonnage to that scheme?

Mr. THOMAS. I heard that.

Mr. SHEARN. The operators in that region were a troublesome factor, were they not, in the maintaining of prices at tide water?

Mr. THOMAS. I never found them so, particularly. They are a very amiable lot of gentlemen, especially when you let them do as they want to.

Mr. SHEARN. Were they not a disturbing factor in the situation?

Mr. THOMAS. Not particularly so.

Mr. SHEARN. Was not the Pennsylvania Coal Company?

Mr. THOMAS. Not particularly so. The Pennsylvania Coal Company was a very conservative concern.

Mr. SHEARN. They wanted more for their coal and wanted to pay less freight, did they not?

Mr. THOMAS. I do not know what they wanted. They always wanted a larger division of the rates.

Mr. SHEARN. That amounts to the same thing as paying less freight?

Mr. THOMAS. It did not reduce the total rate. They wanted

1397 a little more of the turkey themselves unless——

Mr. SHEARN. If their share of the rate was decreased, that left larger proceeds for the sale of their coal, did it not?

Mr. THOMAS. Well, in a general way I might say that it might, but I do not think that would have been the practical result from my experience with them. I think they would put it with their surplus.

Mr. SHEARN. The Pennsylvania Coal Company or its stockholders would have been better off if they did not have to pay so much freight, would they not?

Mr. THOMAS. They might have more to divide among themselves.

Mr. SHEARN. So would the other independent operators in those fields. Were not those representations made to you at this time and was there not trouble about it?

Mr. THOMAS. No; there was no trouble.

Mr. SHEARN. It got so far that a corporation was organized under the laws of the State of New York, called the Delaware Valley & Kingston Railway, to build a railroad from Hawley to Rondout?

1398 Mr. THOMAS. There was such an organization; yes, sir. It was a New York State line.

Mr. SHEARN. The Erie & Wyoming Valley was to take it to the New York State line, was it not?

Mr. THOMAS. No; there was an intermediate line.

Mr. SHEARN. When it came to your knowledge that this railroad was projected, you employed counsel, did you not, to oppose the granting of the charter before the railroad commission?

Mr. BROWNELL. I object to that as improper.

Mr. THOMAS. I have no objection to answering it. I will give you the whole history of the matter if you want it.

Mr. BROWNELL. There is nothing to conceal about it. It is not objectionable in itself, but there is no use encumbering the record with it.

The CHAIRMAN. You may answer it.

Mr. THOMAS. The Erie & Pennsylvania Coal Company——

Mr. SHEARN. Did you employ counsel to oppose the granting of that franchise before the State railroad commission of this State?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. And the franchise was granted?

1399 Mr. THOMAS. It was.

Mr. SHEARN. You employed counsel to oppose it in the courts?

Mr. THOMAS. I did everything I could to prevent the building of that line, and would do it again.

Mr. SHEARN. When the franchise was sustained in the courts, you bought the Pennsylvania Coal Company?

Mr. THOMAS. We did. The Erie had carried the tonnage of the Pennsylvania Coal Company to tide water between thirty and forty years. It was threatened with the loss of that tonnage. In the financial condition of that company, the loss of that tonnage would have been serious and I would have gone to any legal means to protect our property from that invasion. If the relations between that property and the Erie Railroad could have gone on, I would have welcomed it. I strongly advised the purchase of the Pennsylvania Coal Company. It was the best thing the Erie ever did. It made it a solvent, dividend-paying corporation. I look back upon no act in my 15 years' connection with that company that I am better satisfied with than that.

Mr. SHEARN. With the financial result, of course, you have reason to be thankful.

1400 Mr. THOMAS. I assume the entire responsibility for that transaction.

Mr. SHEARN. That railroad, if it had been built, would have resulted in competition in both the transportation and sale of anthracite coal?

Mr. THOMAS. That is a matter of assumption.

Mr. SHEARN. It was designed to carry coal?

Mr. THOMAS. It would have resulted in the loss of that tonnage to the Erie Railroad.

Mr. SHEARN. That is, there would have been another party to deal with in the anthracite-coal situation?

Mr. THOMAS. There might so far as some of the roads were concerned, but the Erie would would not have been in it. We would have been out.

Mr. SHEARN. During January, February, and March of this year the coal purchase contracts of the Lehigh Valley Coal Co. were suspended, were they not?

Mr. GOWEN. Mr. Thomas, do not answer that, please. It is the same question as to the transactions of the Lehigh Valley Coal Company.

Mr. SHEARN. Did there come under your observation as president of the Lehigh Valley Railroad, in January, 1903, a proposition to suspend the coal purchase contracts for the ?

1401 Mr. GOWEN. Do you ask him as president of the Lehigh Valley Railroad Company?

Mr. SHEARN. Yes, sir.

Mr. THOMAS. It did not come before me as president of the Lehigh Valley Railroad Company.

Mr. SHEARN. Did you as president of the Lehigh Valley Railroad Co. enter into a contract or contracts for the suspension of the 65 per cent purchase contracts during January, February, and March, 1903?

Mr. THOMAS. Not as president of the Lehigh Valley Railroad Company.

Mr. SHEARN. I think that is all, Mr. Thomas.

Cross-examination:

Mr. GOWEN. I have one or two questions to ask you, Mr. Thomas. This meeting to which you referred that took place in 1896 between the presidents of certain anthracite-carrying roads related to business for the ensuing year, did it not?

Mr. THOMAS. Yes, sir.

1402 Mr. GOWEN. That was all that was under discussion and all that was dealt with?

Mr. THOMAS. All that was dealt with at that time.

Mr. GOWEN. I think you have a statement showing the percentage of tonnage transported by the Lehigh Valley Railroad Company to New York tide of the total coal mined and purchased by the Lehigh Valley Coal Company.

Mr. THOMAS. Yes, sir.

Mr. GOWEN. I wish you would give that percentage.

Mr. THOMAS. About 23 per cent.

Mr. GOWEN. 23 per cent comes to tide?

Mr. THOMAS. Yes, sir.

Mr. GOWEN. And the balance goes to line and western points?

Mr. THOMAS. Yes, sir; and Chicago, Buffalo, Milwaukee, and points out there.

Mr. GOWEN. You were asked as to the proportion of purchased coal transported by the Lehigh Valley Railroad Company. I wish you would give, in that connection, the amount of coal transported during the year 1901 by the Lehigh Valley Railroad Company on account of operators that did not sell to the Lehigh Valley Coal Company.

1403 Mr. THOMAS. In 1901 there was 1,889,000 tons of that coal.

Mr. GOWEN. That did not include Markle coal?

Mr. THOMAS. No, sir; that is for the year ending November 30th, 1901. The Lehigh Valley fiscal year has always closed on the 30th of November until last year, when it was changed to June 30th. That accounts for these figures I have.

Mr. GOWEN. So that almost one-third of the tonnage of the Lehigh Valley Railroad, transported for 1901, was coal belonging to individual operators who had not sold to the Lehigh Valley Coal Company?

Mr. THOMAS. Yes, sir.

Mr. GOWEN. That is all.

Com'r CLEMENTS. I suppose you have been familiar with the freight rates for a number of years from the anthracite points of shipment to various markets, have you not?

Mr. THOMAS. I have had general knowledge of it.

Com'r CLEMENTS. Have they been changed much in the last few years?

Mr. THOMAS. They have varied at different times. I think they have been slightly reduced at tide water.

1404 Com'r CLEMENTS. How have they been put into effect from time to time on the various roads? Are they the result of conference between the officials of the different roads?

Mr. THOMAS. No; I do not think so. I think the changes have been more brought about by competitive conditions with bituminous coal, especially in respect to the fine sizes. There is some confusion, I think, in the minds of the people as to anthracite coal. There is only about 60 per cent of all the anthracite coal produced that is what is called domestic sizes—that is, used entirely for house consumption. The rest is refuse. It is winning back what was formerly waste, and it is marketed now in competition with bituminous coal. You can not increase the consumption of domestic sizes, prepared sizes, except as the houses increase and the country grows. It is not used for manufacturing purposes, and after you have filled a man's cellar with what he requires for the winter, he will not pay you a penny to fill his dining room.

1405 Com'r CLEMENTS. As I understand it, in respect to all other kinds of traffic in his territory, the roads, through the official classification committee, or some other organization, by some means agree upon the classification and freight rates. Is not that so as to this coal?

Mr. THOMAS. I think as to the question of freight rates, in times past, there have been consultations in regard to it, but there is no comparison as to the cost of transporting anthracite coal and bituminous, and if you gentlemen will take a trip to the anthracite regions, and see the work we have to perform in getting that coal together, it would give you a better insight into it than anything else I know of. It would afford me great pleasure to give you that opportunity.

Com'r CLEMENTS. That goes to the question whether the rate is reasonable or not, but does not go to the question as to how it is done. Now, going back to the time when they were the result of consultation between the different roads——

Mr. THOMAS. The rates as they exist have undoubtedly been the result of consultation among the different officers. They must have been originally. They have been more stable.

1406 Com'r CLEMENTS. One other question. Taking in view the manner in which these coal companies are organized, the stock being held by the carrying company, and the practice that prevails in regard to the purchase of the coal and the manner of the sale, does that, in your judgment, not tend to discourage the opening and development of independent mines?

Mr. THOMAS. I do not think so, because you can not increase the consumption of the prepared sizes. The cost of producing anthracite coal is steadily increasing from year to year. It has increased largely since 1900. Mr. Mitchell has been able to do what no coal president been able to do—get up the price of coal. The situation has not been normal since 1900.

Com'r CLEMENTS. Would an independent person or company be in all respects on an equality with one of these companies organized by the carrying companies and with whom the railroad or coal company has contracts in regard to the sale of the product—would an independent or individual undertaking to open a new mine begin in all respects on an equality with those?

Mr. THOMAS. The best answer to that is that we have eighteen
1407 or twenty of such operating on our line. Speaking of opening new mines, I do not know where you will get a new one. This anthracite is in a limited field. The ownership is pretty well settled.

Mr. GOWEN. You might explain to the Commission the cost of opening one of these mines.

Mr. THOMAS. We spent last year six hundred thousand dollars rebuilding one. In another we are raising ten tons of water for every ton of coal. Every year the mining of anthracite coal is becoming more and more expensive. It is not a necessity. Anthracite coal is a luxury. If by some catastrophe the entire field should be wiped out of existence, it would be replaced by bituminous coal and we would soon forget that anthracite ever existed. For use in houses it has great advantages, but coke and bituminous coal are continually making inroads upon it. In the last strike they made great advances. The mistake the able attorney and his client makes is assuming that on this 35 per cent contract all this coal comes to New York. About 10 per cent of that coal comes here. It is distributed to other points, and as far as the Lehigh
1408 Valley is concerned, it would be better for us if we did not take any to New York, but could take it where we get a longer haul.

Mr. SHEARN. It does not seem to me, while that is very interesting, that it answers the question of the commissioner. It does not to my satisfaction, if it does to his, and I would like to put it over again—whether the ownership and control of these large coal companies by the railroad companies is not a discouragement to the independent operation of colleries. Is, in other words, an independent operator of a colliery in

the same position, so far as advantage is concerned, with the Lehigh Valley Coal Company?

Mr. THOMAS. Exactly.

Mr. SHEARN. Does not he have to pay the cost of selling coal, which amounts apparently in some cases to 12 cents a ton, that you charged Markle? For instance, if an independent wants to sell his coal he would probably have to make some kind of an arrangement, as Mr. Markle with you—perhaps no better.

1409 Mr. THOMAS. I do not know about that. You better hear Mr. Markle on that.

Mr. SHEARN. Suppose it is only five cents—the testimony shows that a fair estimate is ten cents—but suppose it is only five cents a ton. He has to pay that, does he not?

Mr. THOMAS Yes, sir.

Mr. SHEARN. And the man who sells his coal to the coal company and turns over the entire product of his mine to a coal company owned by a railroad company, he does not have to pay that cost?

Mr. THOMAS. You make the mistake——

Mr. SHEARN. Does he?

Mr. THOMAS. A man that wants to open an independent operation on the Lehigh Valley Road will be welcomed and I will do everything to help him, and he will pay no more freight than the other shippers pay.

Mr. SHEARN. The other shipper gets back net 65 per cent?

Mr. THOMAS. Yes, sir.

Mr. SHEARN. Suppose the independent is able to sell as

1410 advantageously as that and gets the same price. He has to take out of the 65 per cent not only the tariff rate, which would amount to $1.55, but he has also got to pay the cost of selling the coal?

Mr. THOMAS. You are assuming that all this coal would come to tide water.

Mr. SHEARN. Well, cut that out—such part as does come to tide.

Mr. THOMAS. The best answer to that is that the Lehigh Valley Coal Company, out of its 65 per cent contracts and putting it altogether, does not lose any money on its 65 per cent contracts.

Mr. SHEARN. Well, assuming that to be the case, go back to my question. Is not a man who will not consent to turn over the output of his mine to a coal company owned by a railroad company that much worse off when compared with the other operator?

Mr. THOMAS. I do not think so. That is a commercial question, a commercial transaction.

Mr. SHEARN. I know that it costs money to sell coal.

1411 Mr. THOMAS. He does not go into it because he thinks he can make more money by not doing it. Last winter that same poor individual operator that had to pay, eight, ten, or twelve cents, sold his coal for $12 a ton here, whereas the coal of the others was sold at $5.

Mr. SHEARN. It is not a question of sympathy at all.

Mr. THOMAS. Probably not.

Mr. SHEARN. Not at all. The practical point is what the effect would be upon the price of coal to the public. Now, is it not a fact that a man who refuses to sell his coal and turn over the management of his

property to a coal company owned by the railroad company is that much worse off than the man that will, as the cost of selling coal amounts to?

Mr. THOMAS. I do not think so, because he evidently thinks, and evidently correctly, that he will make more money out of his business than by turning it over to us.

Mr. SHEARN. He can not get higher prices for his coal than your companies charge?

Mr. THOMAS. Yes, sir; he did it last winter right along.

1412 Mr. SHEARN. That was during abnormal conditions. We heard it argued here the last few days that you could not expect to get a higher price for coal than Mr. Baer was willing to allow you to get. Do you suppose that if you could not, a little independent could?

Mr. THOMAS. The best answer I can make to that is that he did it.

Mr. SHEARN. That was when your coal was not coming here in large quantities?

Mr. THOMAS. We were bringing every ton we could here.

Mr. SHEARN. Mr. Baer testified that the terminals were jammed and crowded, carrying the coal of independents, and that you could not get your own coal through. Was that your experience, too?

Mr. THOMAS. Our terminals were crowded, but not unduly crowded, and we kept nobody out. I have heard all these stories about Bergen Flats being crowded with cars and that we were trying to bull the market. There was nothing in that. I think the operators did wrong, although they followed good commercial sense. I would be glad to see it kept down. It took a corporation without a soul to try to keep

1413 down the price of fuel, but the private individual took advantage of it.

Mr. SHEARN. Do you believe, from your experience in this business—all the years you have been connected with it—that if these great companies bringing coal to tide water here announce a circular price of $4.50 a ton, that Mr. Kemmerer, for instance, can sell here for $5.00 a ton and get the price for it?

Mr. THOMAS. I do not think Mr. Kemmerer will get much more for his coal under normal conditions than the rest of us.

Mr. SHEARN. If Mr. Kemmerer was not turning over his coal to a coal company owned by a railroad company, and was getting the same price that the coal company was getting, he would not be as well off as the coal company, would he?

Mr. THOMAS. No; and if he had a lot of bad debts, he would be very much worse off.

Mr. SHEARN. I used Mr. Kemmerer because——

Mr. MOOT. Don't you assume in that question that the coal company, if it happens to be a railroad company, pays salaries and office rent, and sells coal for nothing and boards itself?

1414 Mr. THOMAS. Mr. Moot, if I can give the public or Mr. Shearn or the Commission any light on this subject, I will be delighted to. If it amuses them, it does not worry me a bit.

Mr. SHEARN. It is not a question of being amused, Mr. Thomas. I do not think you have shown such a spirit before, and I do not think you ought to. I am not doing this for amusement.

1415 Mr. THOMAS. I did not suppose you were. I credit you and your client with the very highest public motives in bringing forward this

case, and I might be permitted to say that I think you do not understand it; and if you did, you never would have brought it; and I believe I can sit down and convince you or your client, who I understand is a gentleman of intelligence and ability, that he is entirely wrong. There has been so much talk about this thirty-five per cent rate. That is simply a yard-stick which is used to measure the commercial transaction between two men.

Mr. SHEARN. I appreciate that, sir, but Commissioner Clements, who has had, if I have not, a vast amount of experience in cases similar to this, asked you that direct question, and it did not seem to me it was answered; so I asked you.

Mr. THOMAS. I will do the best I can to answer you. I will answer that now.

Mr. SHEARN. You have answered it, that he would be so much the worse off, he would be measured by what it would cost him to sell his coal?

Mr. THOMAS. Minus what it would cost us to sell ours; we do not pay our office rent, we do not hire these men to take this coal, we
1416 do not take care of these bad debts, we do not take care of the advertising in the newspapers for nothing; and if it costs us something it costs him something, too. Now, by doing a large business, it may cost us less than him.

Mr. SHEARN. But the man who gets back the 65 per cent, with coal at $4.00, gets back $2.60. Now, then, if the man who is not selling to the coal company has his coal sold at the same price the other man has sold—that is, at the circular price, he does not get back $2.60, because he has to take out of that, in addition to the freight, the cost of selling the coal?

Mr. THOMAS. But, my dear sir, you might just as well argue he does not get back his house rent. He has not good commercial sense if he don't take advantage of any opportunity like that.

Mr. SHEARN. If he had good commercial sense he would turn over his mine to your company. Most of them have done that, have they not?

Mr. THOMAS. No; not even the majority have done it on our line. The number of individual operators is largely in excess.

Mr. SHEARN. The number is increasing steadily?

1417 Mr. THOMAS. On the contrary, it is not. There are about eighteen or twenty individual operators on the Lehigh Valley Road.

Mr. SHEARN. With an output of about how much?

Mr. THOMAS. About two million tons.

The CHAIRMAN. Have those men the opportunity to make the same contract of sale that others do?

Mr. THOMAS. They have; it is open to them while the lamp holds out to burn.

Mr. SHEARN. You were asked a question about the cost of carrying anthracite and the cost of carrying bituminous, and you said there was no comparison between them.

Mr. THOMAS. There is not.

Mr. SHEARN. You had in mind, of course, the great expense you are put to for laterals that bring coal to the gathering points?

Mr. THOMAS. That is only one item.

Mr. SHEARN. That is one of the large elements, is it not?

Mr. THOMAS. That is one item.

Mr. SHEARN. And another element is the cost of the terminals?

Mr. THOMAS. And another element is the cost of the terminals.
1418 That is still another; but there is still another and very important one, and that is the large number of sizes of anthracite coal, something like eight or nine, while substantially there is only one, or at the most, two sizes of bituminous, and it requires a very great expense in shifting——

Mr. SHEARN. And separating?

Mr. THOMAS. Yes; we may have a hundred cars standing at a certain point. There may be one order for one car. That car may be in the middle. But bituminous coal comes along practically in one size.

Mr. SHEARN. Yes; but in hauling from your gathering point to your terminal, through business, there is no difference, of course, in the cost of hauling anthracite than bituminous?

Mr. THOMAS. Why, after any property is gathered together and loaded into a car and delivered at some particular point, to haul that to another point it don't make any difference whether it is coal, pig iron, or feathers——

Mr. SHEARN. Or silk?

Mr. THOMAS. Or silk or sawdust.

Mr. SHEARN. It makes freight cheaper, does it not, where you
1419 can make up a heavy train of one particular kind of traffic? For instance, it is a good deal cheaper to transport coal in a solid train of twenty, thirty, or forty cars, all containing coal, than it is to transport mixed freight where these other things mentioned—silks, pig iron, and all those things—are mixed up in a train of cars.

Mr. THOMAS. I do not know as it makes any difference in the expenses of train movement whether freight is loaded with coal, part silks, part feathers, or not. I would not want to admit that.

Mr. SHEARN. Do you know of anything that is cheaper to haul between your gathering point and your terminal than anthracite coal?

Mr. THOMAS. Oh, I do not know as there is any difference in hauling a pound of matter between any two given points, whether it is composed of one commodity or another, as far as that goes—except passengers.

Mr. SHEARN. When you get anthracite and bituminous down to the terminals it has to be dumped into vessels. Doesn't it cost more to put the bituminous into vessels than it does the anthracite?

1420 Mr. THOMAS. Well, that is open to argument. I can give you lots of evidence to the effect that——

Mr. SHEARN. What is your opinion?

Mr. THOMAS. My own opinion is that in the majority of instances and in the majority of times that it is cheaper—just as cheap to handle one as it is the other.

Mr. SHEARN. They are about the same, then, you think?

Mr. THOMAS. A great deal depends on the character of the equipment. If the equipment is built so that it dumps and the angle is sufficiently sharp, all of the coal, whether bituminous or anthracite, will run out; if it does not do that, if it has a level space in the bottom and requires some shovelling—it will require it in both cases—I would not say there is any marked difference as far as the simple dumping of the coal is concerned.

Mr. SHEARN. If there is a difference, is it not, then, that it is cheaper to unload anthracite year in and year out?

1421 Mr. THOMAS. Well, anthracite freezes; take the fine sizes of anthracite, barley, rice, and those sizes, and they freeze pretty solid in the winter, much more so than bituminous, because their preparation requires much use of water; they are wet, and the result is that they are fine, frozen and solid, and require to be thawed out, and I think it costs more to dump those than it does bituminous.

Mr. SHEARN. But the freight rates we have under consideration in this proceeding are freight rates on prepared sizes; and comparing the cost of handling—shipping prepared sizes of anthracite—with the ordinary run of bituminous, is it not your own opinion that there is some difference in favor of anthracite, prepared sizes, as compared with shipping this soft coal?

Mr. THOMAS. I do not think that, with properly constructed equipment and docks.

Mr. SHEARN. Well, with the equipment you have?

Mr. THOMAS. Well, I do not think, substantially, to be frank with you, that there is any marked difference between them.

Mr. SHEARN. At any rate, it does not cost any more to unload bituminous than it does anthracite?

1422 Mr. THOMAS. Well, I would not want to say it costs more, as to one or the other; it would be a mere matter of opinion.

Mr. SHEARN. So that the different elements that go into this increased freight rate you are speaking about, are the cost of the laterals and the equipment of the laterals, the cost of the terminal and the cost of differentiating between these different grades—separating the grades of coal?

Mr. THOMAS. There are other elements than that.

Mr. SHEARN. What other elements are there?

Mr. THOMAS. You must bear in mind that the anthracite that comes to tide water, especially, has a very much shorter haul than bituminous. Bituminous has a haul aggregating four or five hundred miles. When this comes down here it has an aggregate of about 160 or 170 miles. Now, having gathered that stuff up and gathered it into the trial, and starting it, the difference in cost between the long haul and the short haul is very slight; the initial expense is where you come in, and not only that——

1423 Mr. SHEARN. With the high terminal expense on a short haul, of course, it necessitates a somewhat higher rate per ton per mile than the same terminal expense on a long haul?

Mr. THOMAS. Yes; now the laterals on the anthracite. This anthracite all lays down in an uneven manner—it has to be lifted up—it is entirely different from that of bituminous, which runs in even, as flat as the table, and is dumped in the car and comes out on comparatively level territory.

Mr. SHEARN. But the greater part of your haul is down level grade after you get to the gathering point?

Mr. THOMAS. Let me illustrate to you where you are wrong. The coal we haul is from the Wyoming & Lehigh field; they lay on the east and west side of the mountain like that [illustrating]; the Wyoming like that [illustrating] and the Lehigh on this side [illustrating]. Now,

good commercial sense would say that all of the coal lying on that side [indicating] ought to go west and all that lies on this side ought to come east [indicating]. Now, as a matter of fact, we can not adjust our transportation to that condition of matters.

Mr. SHEARN. Well, you are endeavoring to do so.

1424 Mr. THOMAS. It is impossible, as a commercial transaction. The people down in New York will have the lighter free-burning coal from this region. Now, the people in the West like a firmer, harder, better-handled coal. We have to haul that uphill. In hauling that, the result is that the loads of coal are passing each other. Every student of transportation would say that that was a foolish proceeding—"that man don't know his business." I have had people tell me I do not know how to run the railroad, and it simply shows, like some other people, they did not have the full and complete knowledge of the industry which would enable them to express an intelligent opinion.

Mr. SHEARN. There is no resisting, you, Mr. Thomas?

Mr. THOMAS. Well, I have this advantage, Mr. Shearn: You understand the law and your client understands publishing a newspaper, but, unfortunately, both of you are a little bit shy on knowledge of the anthracite trade and its situation. I will do all I can to enlighten you.

Mr. SHEARN. Now, I want the facts, and we will make the arguments later. Now, this hauling you speak of up hill; when the coal is coming down in this direction, to this locality, how long a haul is that?

1425 Mr. THOMAS. From the Wyoming fields?

Mr. SHEARN. Yes, to the top of the grade.

Mr. THOMAS. Oh, it is a sixty-foot grade of about fifteen to twenty miles.

Mr. SHEARN. Then, after you have hauled the coal up these fifteen miles, all the rest of the haul is down hill to tide water?

Mr. THOMAS. Varying grades.

Mr. SHEARN. Well, the general grade is down, is it not?

Mr. THOMAS. Ah, the general dip of the topography of the country is towards tide water, but you must understand it is interrupted with varying *in*dulations.

Mr. SHEARN. But is not the greater part of your haul after you get to the top of this fifteen-mile hill down hill?

Mr. THOMAS. No.

Mr. SHEARN. Down grade?

Mr. THOMAS. No.

Mr. SHEARN. Is the greater part of your haul up grade?

Mr. THOMAS. No, it could not be up grade, my friend; it

1426 would be impossible. Now, take the case of the Erie road; that shows very *in*dulating and severe grades after it gets up out of the valley where it originates. She has excessive grades, and very difficult and expensive ones. So has the Susquehanna & Western. The Lehigh is more advantageously situated than that in respect to their *in*dulating grades; having once reached the foot of the mountains, they are very much less than that of the other roads. An examination of the profile of the Lehigh Valley road will show you her maximum grades between Buffalo and tide water, excluding that 66 feet grade of which I speak, which are centering and consolidated; she has very favorable locations in regard to the topography of the road.

Mr. SHEARN. What about the Erie and the Susquehanna?

Mr. THOMAS. The Erie and the Susquehanna are very unfavorably located in that respect.

Mr. SHEARN. Do you recollect what they are?

Mr. THOMAS. The Erie has as high as 67, and I guess pretty close to 70 feet, on short grade.

Mr. SHEARN. Have you ever been able to estimate with any accuracy the cost of transporting a ton of coal either from the Erie's fields or from the Lehigh's fields to tide water?

1427 Mr. THOMAS. My dear friend, I have been in this business for thirty years; I have been a close student of it. I have never been able to determine what it cost to carry a ton of freight one mile. That is probably on account of my stupidity or lack of intellect.

Mr. SHEARN. Well, the Interstate Commerce Commission found in the case of Coxe Brothers vs. Lehigh Valley that *that* the actual cost of bringing a ton of coal from the coal fields to tide water was 85 cents a ton.

Mr. THOMAS. Yes. My recollection is that the court to which that was afterwards referred thought they were slightly in error.

Mr. SHEARN. Now, then, the only conflict with the court was on the the question of what was a proper allowance for terminal expenses. Have you examined the reports of the Lehigh Valley Railroad Company—the annual reports for a number of years back?

Mr. THOMAS. I have examined them; yes.

Mr. SHEARN. Don't you know that in the reports up to the time of the Coxe Brothers' trial they stated year after year what they estimated to be the cost of hauling coal to tide?

1428 Mr. THOMAS. I never went back as far as that; that antedates so far my administration I have not had time to read that up.

Mr. SHEARN. If you will examine those records you will find that the Interstate Commerce Commission finding on that subject was based on what the railroad company estimated to be the cost of transportation of coal, as shown by its own reports.

Mr. THOMAS. If those reports of the Lehigh Valley Railroad Company, made at that time, are not any more accurate nor reliable than the number of reports I have found there in regard to things, they are absolutely worthless.

Mr. SHEARN. Does your knowledge of the business lead you to believe that the cost, the average cost, of transporting anthracite coal from the coal fields to tide water is about 85 cents a ton?

Mr. THOMAS. I would not think it was as low as that. I do not believe it can be transported at any such price as that and get out whole. The best answer is this: That the Lehigh Valley Railroad has no water in its capital; it has never been through bankruptcy; it has not paid a dividend in something like ten years; it is utterly unable to pay anything to its stockholders as yet.

1429 Mr. SHEARN. That is on account of the vast sums that it is putting away for improvement on the property and carrying a surplus account?

Mr. THOMAS. The surplus account happens to be a debit of about three million dollars to profit and loss.

Mr. SHEARN. Isn't that simply a matter of bookkeeping, and that you have been putting away enormous sums of money, and very much larger in proportion to other railroads, for improvement of your plant, instead of paying it in dividends, or instead of charging it as a surplus?

Mr. THOMAS. The Lehigh Valley has been substantially going through reorganization in respect to the physical condition of its property, and its stockholders, instead of going through receivership and being assessed, have foregone any dividends; but in addition to foregoing any dividends they stood confronted last November with an absolute deficiency sufficient to pay the interest for the current year of over three million dollars.

Mr. SHEARN But, in other words, you are rebuilding the road and reequipping the road out of this business instead of paying dividends to stockholders?

Mr. THOMAS. I beg pardon; not out of this business, but out of its business.

1430 Mr. SHEARN. But this is a very large and the most profitable part of its business, is it not?

Mr. THOMAS. Well, it is a fair proportion of its business. It is about forty per cent of its total tonnage.

Mr. SHEARN. What, from your experience in the business, would you estimate the cost to be of transporting a ton of coal from the coal fields to tide water?

Mr. THOMAS. I would have to answer, to be perfectly frank, Mr. Shearn, that I do not know; that I do not believe anybody else does; I doubt whether they could make an estimate that would be accurate.

Com'r PROUTY. What do you mean by that? What do you mean in your own mind by the cost? Do you mean the cost of removing that coal, or entire cost?

Mr. SHEARN. Oh, no; I mean the entire cost, taking into consideration the allowances for maintenance of way and all the expenses.

Mr. THOMAS. Wouldn't you allow us anything for the interest on the money we had invested in that property and the interest we had taken?

Com'r PROUTY. You could make a pretty close estimate as to the cost of moving, couldn't you?

1431 Mr. THOMAS. Unquestionably, Mr. Prouty, I might make a very close estimate as to how much money I paid to the train men, as to how many pounds of fuel we burned, what we paid the engineer. That computation could probably be made by anybody, but that is no more the yardstick by which to measure the total cost than the value of the ground on which this building stands.

Mr. SHEARN. Obviously not, and the 85 cents was not the sum of the different amounts paid for fuel and for train men and for engineers at all, but to take into consideration the cost of the engines, and what grades and the tracks and everything else, and that——

Mr. CAMPBELL. No; not everything else. It did not include interest nor general expenses.

Mr. THOMAS. Mr. Shearn, I most heartily extend to the Commission and to yourself and your client—I understand he is off on his wedding trip and engaged in better and more pleasant things—the invitation to go up to that anthracite region and see the conditions under which this traffic is gathered together. There are miles of road there on which we

have to keep watchmen on in sight of each other, and sometimes a
1432 piece drops right down out of sight in spite of all that, the whole country is undermined; when you talk about the cost of handling anthracite coal it is not to be compared with that of any other traffic I know of. It is one of the most enticing, deceiving businesses that men have ever gotten into, and one out of which they have got less money and lost more sleep than anything I know of.

Mr. SHEARN. Do you think it costs the Lehigh Valley more per ton per mile to carry anthracite coal than it costs the Reading?

Mr. THOMAS. I do not know anything about the Reading; I am not familiar with their property. I know it costs us a good deal and that that cost of operation is continually increasing.

Mr. SHEARN. Does it cost more than it costs the Erie and the Susquehannah & Western?

Mr. THOMAS. I would not like to compare it with those. Under ordinary conditions the Lehigh can do business as cheaply as the Erie.

Mr. SHEARN. Well, you know it charges a very much larger rate, don't you?

Mr. THOMAS. But the Erie gathers her tonnage under entirely
1433 different conditions from the Lehigh. Each territory, the upper, the middle and lower, each mine, is a problem by itself and bears no comparison, except in one fact, that they produce a similar commodity to each other. Now, our expenses of transportation are continually increasing in this country, and I believe that the day of cheap transportation in this country, if I read the signs aright, is rapidly passing away, with the increase in the price of labor, of material, of the taxation of everything that goes into the making of these large properties, we are rapidly passing away from that era which has made our cost the cheapest of that of any other country in the world, and we are approaching more nearly that of England, where its costs are large. If we depart from this principle of making largely our improvements out of income we will simply hasten the day when the era of cheap transportation in this country is gone forever. Now, I do not charge anything for this fifty-cent lecture and I am sorry to have inflicted it on you.

Mr. SHEARN. Have you ever estimated the cost per ton of coal handled either by the Erie or the Susquehanna & Western or by the Lehigh
1434 Valley involved in terminal expenses?

Mr. THOMAS. No; I never have gone into any particular calculation of that. They are two many varying quantities; to illustrate, at Perth Amboy the Lehigh will have to expend next year a half a million dollars on rebuilding her coal trestle. Now, she is not going to get any more coal to carry; she is not going to get any cheaper working appliances than she has there now. Now, when you come to make that half million dollars, upon what shall I apportion that—the year in which we built it, the period which is to come or the period which is past? Supposing it is destroyed by fire the next day——

Mr. SHEARN. It is insured, is it not?

Mr. THOMAS. There are all those quantities which enter into this, which makes me perfectly frank——

Mr. SHEARN. Do you know, Mr. Thomas, how much money is invested in the Lehigh Valley's terminals at Perth Amboy?

Mr. THOMAS. No; I do not, as separate from the entire cost of property, nor do I know in the Erie.

Mr. SHEARN. Well, you have inspected?

Mr. THOMAS. I have.

1435 Mr. SHEARN. Are you not able to estimate what they must have cost?

Mr. THOMAS. I know that they indespensible to us in respect of the work they are performing.

Mr. SHEARN. Well, looking them over, and from your knowledge of what it costs to build such structures, don't you know what the terminals are worth—what their value is—what their cost was?

Mr. THOMAS. No; because you take the Weehawken Terminal of the Erie road, that was purchased by Mr. Gould and in the Fisk and Gould administration. I do not know what he paid for it, but I do know that you could not go and replace that terminal at any price whatever to-day. Now, what a thing is worth that you can not duplicate I am not a mathematician enough to determine, and it is much the case with anthracite coal.

Mr. SHEARN. Are you able to make any estimate as to the cost per ton of your laterals and the expenses of getting coal to the gathering point?

Mr. THOMAS. No; I never have undertaken to separate that, nor do I know the precise rule to apply on that, because some of these trains go down on the main line that——

1436 Mr. SHEARN. How do you fix the rate? What are the elements that enter into the fixing of the rate? You *know* to know something about these things to fix the rate.

Mr. THOMAS. The rate was fixed before I came on the properties, Mr. Shearn.

Mr. SHEARN. Is the idea of the rate to charge as much as the traffic will stand?

Mr. THOMAS. No, I think that is rather antiquated, that method. I think the commercial conditions fix rates all over the world.

Mr. SHEARN. It would not make much difference to you, anyhow, what the rate was, because whatever there is left over out of the operations of the Lehigh Valley Coal Company belong to the Lehigh Valley Railway Company, don't they?

Mr. THOMAS. There has not been any left over yet.

Mr. SHEARN. If there was anything left over they would get it?

Mr. THOMAS. I would try to get it; I do not know whether I would be successful or not.

Com'r PROUTY. You testified that the Lehigh Valley Coal
1437 Company sends ten per cent of its coal to tide water?

Mr. THOMAS. About ten per cent of the individual operators' coal that is not controlled by contract come to tide water, and about twenty-five per cent or twenty-three per cent of the Lehigh Valley's coal that was produced and purchased came to tide water.

Com'r PROUTY. So some twenty per cent of that which was purchased comes to tide water?

Mr. THOMAS. I think possibly that would be a fair estimate.

Com'r PROUTY. The Lehigh Valley Coal Company pays the Lehigh Valley Railroad Company freight on that?

Mr. THOMAS. It does.

Com'r PROUTY. The rest of this coal goes to various destinations?

Mr. THOMAS. Yes.

Mr. SHEARN. Who pays the freight on that?

Mr. THOMAS. The Lehigh Valley Coal Company pays the same rate that every shipper on the road pays, the tariff.

Com'r PROUTY. My question is this: Is that coal sold f. o. b. at the mines or is it sold delivered at destination?

1438 Mr. THOMAS. The Lehigh Valley Coal Company's coal is sold at destination. I do not know how the individual operator who is in control by contract may sell his coal.

Com'r PROUTY. I am talking about the coal which the Lehigh Valley Coal Company sells.

Mr. THOMAS. She sells at destination.

Com'r PROUTY. If you sell coal in Chicago, you get a Chicago price?

Mr. THOMAS. Yes.

Com'r PROUTY. F. o. b. Chicago?

Mr. THOMAS. Yes.

Com'r PROUTY. And so with all other destinations?

Mr. THOMAS. Yes.

Com'r PROUTY. And you pay the regular tariff?

Mr. THOMAS. The Lehigh Coal Company pays to the Lehigh Valley Railroad Company the full tariff.

Com'r PROUTY. You say that about one-third of the coal transported by you now is the property of the individual operators and not owned by the Lehigh Valley Coal Company?

Mr. THOMAS. About two million eight hundred thousand.

Com'r PROUTY. Your counsel stated that was about one-third?

1439 Mr. THOMAS. Yes.

Com'r PROUTY. And the individual operator pays the freight on that?

Mr. THOMAS. Yes.

Com'r PROUTY. And he pays the tariff rate?

Mr. THOMAS. He pays the same *with* the Lehigh Valley Coal Company pays.

Com'r PROUTY. That is the tariff rate?

Mr. THOMAS. The tariff rate.

Com'r PROUTY. You have been acquainted with the condition of these rates for a long time, I suppose, Mr. Thomas? How long is it since the individual operator paid the full tariff rate?

Mr. THOMAS. Tide water?

Com'r PROUTY. I do not care where it is.

Mr. THOMAS. So far as I have knowledge he has been paying ever since I have been connected with the road.

Com'r PROUTY. That has only been three or four months. Now, then, going back for the last fifteen years, has the individual operator paid the railroad company the published tariff rate?

Mr. THOMAS. It is my belief he has, Mr. Shearn.

Com'r PROUTY. Did he over the Erie Road?

1440 Mr. THOMAS. So far as I have knowledge.

Com'r PROUTY. The principal shipper over the Erie Road was the Pennsylvania Company?

Mr. THOMAS. They were.

Com'r PROUTY. And you and the Pennsylvania Company prorated on that road?

Mr. THOMAS. Yes.

Com'r PROUTY. So that it was a question of divisions there. Had you any other independent operators who shipped over your line?

Mr. THOMAS. Yes.

Com'r PROUTY. Did they pay the tariff rate?

Mr. THOMAS. They did.

Com'r PROUTY. What would be the effect, Mr. Thomas, of reducing the freight rate on anthracite coal upon the price of coal?

Mr. THOMAS. Well, it is my impression that the individual operators would raise the price of their coal.

Com'r PROUTY. So that you do not think the price of coal to the public would be reduced by reduction of the freight?

1441 Mr. THOMAS. I do not see how it can be when you take into account the increased cost that has lately been upon us to produce.

Com'r PROUTY. You are getting part of that back by raising the price?

Mr. THOMAS. We are trying to, but the total quantity of coal produced is going to be unfavorable for two reasons, first, it is going to be difficult to get back our whole trade by reason of the bituminous coal, coke, and oil, and the further fact that this award of the strike commission will substantially reduce the production ten per cent, the tonnage.

Com'r PROUTY. What effect do you think it would produce on the quantity of domestic coal consumed in the city of New York to raise the price fifty cents a ton, leaving the price of bituminous coal at the same figure.

Mr. THOMAS. I think if you put the price of anthracite coal too largely out of range commercially with bituminous coal, you will affect the volume of the business—you reduce it.

Com'r PROUTY. Do you think an advance of a dollar would produce any material effect on the quantity of domestic sizes consumed?

1442 Mr. THOMAS. I do not think that a very marked advance or a dollar or a reduction of a dollar would very materially affect the consumption in New York City. I think, though, the higher you get the greater the condition becomes—the range between the bituminous and the anthracite—to that extent you narrow the volume of the anthracite trade.

Com'r PROUTY. But there are elements, then, by which you can regulate that price without affecting the quantity of domestic sizes consumed?

Mr. THOMAS. No, I do not think there is as wide a range as your question would seem to imply. I think that is impractical. I do not think we could do anything of that kind if we wanted to. I think we have got to have consideration for what fuel costs in other sections of the country; we have got to have regard to what foreign anthracite coal could be imported for; we have got to have regard to the increasing consumption of coal, of gas, of oil; all of those are creating commercial conditions which we can not entirely disregard, whatever our power might be, even though it is as great as the complainant has claimed.

1443 Com'r PROUTY. Do you know how many tons of prepared sizes are consumed in the city of New York?

Mr. THOMAS. No; but I can easily ascertain that. I would be very glad to give you that information.

Com'r PROUTY. It is said to be about seven millions of tons of anthracite coal consumed.

Mr. THOMAS. I should think for domestic purposes, consumed in New York, seven million would be a very large estimate. I should not think quite as much as that.

Com'r PROUTY. Assume that there is five millions consumed for domestic purposes in New York City, how much do you think the consumption would be reduced by advancing the price of domestic sizes one dollar a ton?

Mr. THOMAS. That would be a guess which really I do not feel competent to make. It would have to be a matter of experience.

Com'r PROUTY. It would not, in your judgment, reduce it a million tons, would it?

Mr. THOMAS. Well, I have not got the judgment to answer that. If I had the knowledge or judgment I would be delighted to answer.

1444 Com'r PROUTY. Now, suppose you were making, at the present time, a dollar a ton—selling five million tons at a profit of five million dollars. Now, then, if you advanced the price a dollar and sold four million tons you would make eight million dollars as against five million dollars before, so that you would be three millions of dollars in if you reduced the consumption one million tons in this city. Now, my question is this: When you consider that fact, do you think there is any series competition to affect the limit to which you could put that price between domestic and anthracite coal——

Mr. THOMAS. Yes; I think there is, very decidedly, and another thing, the ability of the railroad to transport cheap must depend upon quantity as anything else.

Com'r PROUTY. You mean that as your tonnage increased——

Mr. THOMAS. As our tonnage increased, our cost of course decreased up to a certain unit.

Com'r PROUTY. Of your net return?

Mr. THOMAS. Yes.

Mr. SHEARN. But your tonnage has been steadily increasing?

1445 Mr. THOMAS. The tonnage of anthracite coal has increased but very little, and there is where the public is very much confused in respect of the domestic sizes. The increase has been almost entirely upon the bi-product, the refuse sizes, formerly thrown away.

Mr. SHEARN. But that increase enables you, whether it is culm or buckwheat or prepared sizes, to carry coal more cheaply, does it not?

Mr. THOMAS. No; I can not say it does.

Mr. SHEARN. Well, it has its effect, hasn't it?

Mr. THOMAS. Because it is carried at a very much lower rate than prepared sizes.

Mr. SHEARN. Well, it has its effect?

Mr. THOMAS. Well, to some extent; how much I do not know.

Mr. SHEARN. But there is no visible effect upon the rate charged?

Mr. THOMAS. Not upon the rate upon prepared sizes, because prepared——

Mr. SHEARN. You said to Commissioner Prouty that you

1446 thought if the freight rate were reduced the independent operator

would increase the price of coal. What is your theory about that? Why should a decrease in the charges for freight cause an increase in the price he is going to charge for his product?

Mr. THOMAS. I judge the future by the past, and when he had the opportunity to do that last winter he did not fail to avail himself of it; and I do not think, in referring to what Commissioner Prouty said, that a slight decrease in the freight rates would seriously affect the consumption in this market, and from my knowledge of human nature, as set forth by the individual operator, I think he would try to swipe in that little difference.

Mr. SHEARN. Well, the individual operator is to a large extent tied up to the rates by these contracts?

Mr. THOMAS. Oh, no.

Com'r PROUTY. I was referring to the individual operator who had no contract.

Mr. THOMAS. That is the man I am referring to.

Mr. SHEARN. What reason is there for his increasing the price of his coal because he has to pay less freight?

Mr. THOMAS. Well, because he would think he could get it and he would make a very serious effort to get it.

1447 Mr. SHEARN. When the freight rate goes up he would also increase the price, wouldn't he?

Mr. THOMAS. He would be very apt to.

Mr. SHEARN. He would be more apt to increase the price when the freight rate went up than when it went down, wouldn't he?

Mr. THOMAS. I think so. I think that the difference that he paid in the freight rate, if it was reduced now, he would simply add to the price of the coal.

The CHAIRMAN. You mean, then, that some small reduction would not reduce the price of coal?

Mr. THOMAS. I do not think it would. I think there is just about such a quantity of domestic sizes consumed.

The CHAIRMAN. You did not mean that the coal would go up in the market without the freight rate going down?

Mr. THOMAS. No.

Mr. SHEARN. Do you know who owns the control of the stock of the Lehigh Valley Railroad Company?

Mr. THOMAS. It is owned by six thousand different stockholders.

Mr. SHEARN. Isn't there a controlling interest owned by one distinct interest?

1448 Mr. THOMAS. No, it is not; it is an absolutely independent corporation, controlled by the stockholders and managed by its officers.

The Commission at 4.30 p. m. adjourned to Friday morning, May 1st, 1903, at 10.30 a. m.

1449 NEW YORK, N. Y., *May 1, 1903—10.30 a. m.*

The CHAIRMAN. Mr. Shearn, are you ready to proceed?

Mr. SHEARN. Yes, sir; I would like to make a preliminary inquiry as to whether the secretary has received from Mr. Jermyn the contract which he was to mail to him?

Asst. Secy. DECKER. I have not received it.

Mr. CARR. I would like to make a statement before going on, on behalf of Mr. Coykendall, who has been called as a witness. He was subpœnaed the night before last at about eight o'clock in the evening. He telephoned me that he thought he could be here this morning, but when I got to the hotel last night I had word from him that he would not be able to be here. He is president of , and that company is very seriously affected just at this time by the strike of the marine engineers, which it is hoped to adjust. Inasmuch as this hearing will go on at some future time, he can be present then if that is agreeable. I wish to make that excuse for him now.

The CHAIRMAN. Before you call another witness, Mr. Shearn,
1450 and while counsel are here, we would like to consider when this hearing is to be resumed after to-day.

Mr. SHEARN. I would state that it is our intention to bring up in court next week the questions involved regarding the refusal of witnesses to answer questions and to produce books and papers called for; and I should assume, as that will undoubtedly occupy the attention of the same counsel who are engaged here, that it might be better to adjourn to-day until some time week after next.

The CHAIRMAN. Let me say, for the benefit of counsel, that the Commission has assigned cases for hearing in Cincinnati next week, and in Chicago the week following, and can not, therefore, resume this hearing either next week or the week after.

Mr. MOOT. May I ask Mr. Shearn about what time next week he expects to bring these questions up in court?

Mr. SHEARN. On Friday.

The CHAIRMAN. Apparently, as matters now stand with us, it will not be convenient for the Commission to come here again before the last week in May, beginning the 25th, or the following week—the first week in June.

Mr. SHEARN. May I suggest, then, that we meet on the 1st day, when it will be convenient for the Commission to come here—say three weeks from Monday.

1451 The CHAIRMAN. The 25th.

Mr. SHEARN. Is that the first day the Commission can give us?

The CHAIRMAN. It appears now to be the first day.

Mr. CAMPBELL. It would seem the proper course to pursue to allow this question to go over and be decided when the Commission shall discover their convenience. They can then let us know about the date. I do not think it is necessary for us here to-day to decide the exact day when we shall take the case up again.

The CHAIRMAN. I bring the matter up at this time because we wish to conserve the reasonable convenience of counsel on both sides, and thinking there might be some imperative engagements of counsel at some near day in the future, I thought we should apprise you of the fact that we could not be here before the time stated.

(After further discussion:)

The CHAIRMAN. We will consider the matter and make an announcement either before or directly after the recess as to the time when we can take the case up again for further hearing.

Mr. BRADWELL. Where will the hearing be held?

1452 The CHAIRMAN. I think here in New York. Mr. Shearn, you may call your witness.

Mr. SHEARN. I will call Mr. Runyon.

The CHAIRMAN. I see Mr. Meeker is in court, and as he was asked to be here yesterday, I suggest that he be examined now.

Mr. SHEARN. Let Mr. Meeker take the stand.

HENRY E. MEEKER recalled.

Mr. SHEARN. Mr. Meeker, have you produced the figures that show the amounts you received as rebates from the Lehigh Valley Railroad prior to November, 1900?

Mr. MEEKER. I have produced the figures showing the actual rates charged.

Mr. SHEARN. When?

Mr. MEEKER. From 1898 to 1901.

Mr. SHEARN. Mr. Meeker, will you not repeat, so I may understand these figures, what the arrangement was between you and the carrying company during the period covered by these figures. What was the basis of the arrangement in regard to those figures?

1453 Mr. MEEKER. The basis was the difference between the price that the Lehigh Valley Coal Company paid at the breaker for coal and the price which they received at tide water for that coal. This arrangement was not with me alone, but with all shippers over the road, as I understand it. It was forty per cent of the tide-water price, and at that time they were paying the breaker sixty per cent.

Mr. SHEARN. That is, if forty per cent of the tide-water price was less than the published tariff?

Mr. MEEKER. No, sir.

Mr. SHEARN. If it were, I say?

Mr. MEEKER. Whether it were less or more.

Mr. SHEARN. Then the published tariff—the difference between that forty per cent and the published tariff was adjusted with you by the railroad company?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. And these figures you have prepared show what you actually paid on these different sizes mentioned, for the periods mentioned, after the adjustment had been made?

Mr. MEEKER. With the exception of since January, 1901. During November and December, 1900, the rates were above $1.55 rate,

1454 and I paid them the excess, but after that time I simply did not pay the excess. I paid the tariff rate, but did not dispute the bill.

Mr. SHEARN. At some time you paid them more than the tariff rate?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. When did you begin to pay them more than the tariff rate?

Mr. MEEKER. It became that way in November and December, 1900, I think; the figures show that.

Mr. SHEARN. I see that in November, 1900, you paid the Lehigh Valley Railroad Company $1.72 a ton on prepared sizes when the tariff rate was $1.55.

Mr. MEEKER. Yes, sir; that is right.

Mr. SHEARN. And that in December, 1900, you paid them $1.72 on prepared sizes when the tariff rate was $1.55?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. Then these charges shown in these schedules show what you actually paid to the railroad company after the adjustments were made?

Mr. MEEKER. Yes; that is right.

The CHAIRMAN. And since January, 1901, as I understand, you have simply paid the tariff rate?

1455 Mr. MEEKER. Well, since—yes; the bills were rendered to me from January to May, 1901, at over the tariff rate, but during all that time I accepted an adjustment based on the new basis at the breaker to the operator at sixty-five per cent. In other words, I had been paying on the forty per cent basis and I accepted an adjustment on the sixty-five per cent basis.

Com'r PROUTY. You claimed you were entitled to the forty per cent basis when they paid sixty per cent at the breaker, and when they changed to sixty-five per cent you thought your per cent should change to thirty-five?

Mr. GOWEN. So that there may be no misunderstanding during the period covered by these figures handed in by Mr. Shearn you understand that the arrangement under which settlements made with you prevailed with all shippers over the Lehigh Valley Railroad?

Mr. MEEKER. With all shippers.

Mr. GOWEN. Every one was treated alike?

Mr. MEEKER. Yes, sir; everybody.

Mr. GOWEN. That arrangement was based upon payment to the carrier of forty per cent of the tide price of coal at New York?

1456 Mr. MEEKER. Yes, sir.

Mr. GOWEN. During a portion of that time that yielded less than the tariff rate of $1.55, and during a portion of the time it exceeded the tariff rate?

Mr. MEEKER. Yes, sir.

Mr. GOWEN. Are you able to say whether, if that arrangement of charging forty per cent had been in force after November, 1900, it would not have resulted in a larger freight rate than $1.55?

Mr. MEEKER. If the charge of forty per cent had been continued?

Mr. GOWEN. Yes, sir.

Mr. MEEKER. Yes, sir.

Mr. GOWEN. So, subsequently to November, 1900, if that arrangement had continued the carriers would have been in receipt of, or the Lehigh Valley Railroad would have been in receipt of, a larger per cent?

Mr. MEEKER. If the forty per cent had continued; yes, sir.

Mr. GOWEN. Your present contention is that you want to pay thirty-five per cent of the freight rate?

Mr. MEEKER. That was my contention up to August.

1457 Mr. GOWEN. Since that time thirty-five per cent would have resulted in more than the tariff rate, would it not?

Mr. MEEKER. Thirty-five per cent?

Mr. GOWEN. Yes, sir.

Mr. MEEKER. No, sir; I think not.

Mr. GOWEN. Are you sure of that?
Mr. MEEKER. No; I am not sure.
Mr. GOWEN. That is all.
Mr. SHEARN. I offer these tables in evidence.
(The same are hereto attached and marked "Exhibit No. 28.")
Com'r PROUTY. Did you ship coal previous to 1898?
Mr. MEEKER. Yes, sir.
Com'r PROUTY. What rate did you pay previous to that time?
Mr. MEEKER. On the same basis.
Com'r PROUTY. Did that work out a higher or a lower rate than during this period? In other words, was the price of coal in '98 lower than previous to that time?
Mr. MEEKER. The rates were lower.
Com'r PROUTY. Can you tell us what the price of tide coal was during 1896 and '97?
Mr. MEEKER. I do not remember.
1458 Com'r PROUTY. Could you tell by reference to your books?
Mr. MEEKER. Yes, sir.
Com'r PROUTY. Would it be very much trouble for you to give us a statement of the average price of tide-water coal during 1896 and '97—we have it here since 1898?
Mr. MEEKER. I could send that up.
Com'r PROUTY. You will send that to the secretary?
Mr. MEEKER. Yes, sir.
Mr. SHEARN. Now, then, Mr. Meeker, during the times mentioned in this exhibit, from January 1, 1898, on, it was your custom to send a check to the Lehigh Valley Railroad Company for freight, at the tariff rate of $1.55?
Mr. MEEKER. Well, we are drawn on each week by the Lehigh Valley Railroad Company. They draw a draft.
Mr. SHEARN. You were drawn on by the Lehigh Valley Railroad at the rate of $1.55—the tariff rate?
Mr. MEEKER. Yes, sir.
Mr. SHEARN. And you met those drafts?
Mr. MEEKER. Yes, sir.
Mr. SHEARN. And paid them the money?
Mr. MEEKER. Yes, sir.
1459 Mr. SHEARN. And then at a later time in the month you would receive back from them a check covering the differences that you have spoken of?
Mr. MEEKER. That would be the following month. The statement would be made up on the adjusted rates and we would send them a bill for the difference.
Mr. SHEARN. You would send them a bill for these rebates and they would send you a check for them?
Mr. MEEKER. Yes, sir.
Mr. SHEARN. And you had been carrying that practice on for a number of years with them?
Mr. MEEKER. Yes, sir.
Mr. SHEARN. And you understand that was uniform among a great many other shippers?
Mr. MEEKER. With every other shipper that I know of.

Mr. SHEARN. And prior to 1898 there was a still greater difference between the published tariff and the forty per cent?

Mr. MEEKER. I think so.

Mr. SHEARN. So that the amount of your rebates prior to 1898 were larger than after 1898?

Mr. MEEKER. Naturally.

1460 Mr. SHEARN. Now, if the Commission please, I wish to read some of these schedules given here.

Mr. GOWEN. All of them?

Mr. SHEARN. Yes, sir; all of them. This table is headed "Adjusted freight rates charged Meeker & Company by the Lehigh Valley Railroad Company for transporting coal from the Wyoming region and loading same into boats at Perth Amboy, N. J.," 1898, January, tariff rate, $1.55. The adjusted rate charged Meeker & Company—that is, on prepared sizes—was $1.41. For the same month the tariff on pea coal was $1.40, and the rate charged Meeker & Company after the allowance or adjustment was made was $1.17. On buckwheat the tariff was $1.20 and the rate charged Meeker & Company, as adjusted, was $1.15. In February, 1898, the tariff on prepared sizes was $1.55. The rate charged Meeker & Company after adjustment was $1.43. The tariff being $1.40 on pea coal, the rate charged Meeker & Company was $1.21. The tariff on buckwheat being $1.20, the rate charged them was $1.17.

In March, 1898, the tariff on prepared sizes being $1.55, the rate charged Meeker & Company was $1.45. The tariff on pea coal

1461 being $1.40, the rate charged Meeker & Company was $1.21. On buckwheat, the tariff being $1.20, the rate charged Meeker & Company was $1.15.

For April, 1898, the tariff on prepared sizes being $1.55, the rate charged Meeker & Company was $1.47. On pea the rate charged them was $1.20, the tariff being $1.40. On buckwheat the rate charged was $1.16, the tariff being $1.20.

In May they were charged $1.49 on prepared sizes, the tariff being $1.55. On pea they were charged $1.20, the tariff rate being $1.40. On buckwheat they were charged $1.17, the tariff rate being $1.20.

In June, the tariff being $1.55, they were charged $1.49 on prepared sizes. They were charged $1.19 on pea, the tariff rate being $1.40. They were charged $1.17 on buckwheat, the rate being $1.20.

In July they were charged $1.44 on prepared sizes, the tariff being $1.55. They were charged $1.13 on pea, the tariff being $1.40. They were charged $1.15 on buckwheat, the tariff being $1.20.

1462 In August, 1898, they were charged $1.43 on prepared sizes, the tariff being $1.55. They were charged $1.14 on pea, the tariff being $1.40. They were charged on buckwheat $1.15, the tariff being $1.20.

In September, 1898, they were charged $1.43 on prepared sizes, the tariff being $1.55. They were charged $1.13 for pea coal, the tariff being $1.40. They were charged $1.13 for buckwheat, the tariff being $1.20.

In October they were charged $1.40 on prepared sizes, the tariff being $1.55. They were charged $1.12 on pea coal, the tariff being $1.40. On buckwheat they were charged $1.13, the tariff being $1.20.

In November they were charged $1.39 on prepared sizes, the tariff being $1.55. They were charged on pea $1.12, the tariff being $1.40. They were charged on buckwheat $1.13, the tariff being $1.20.

In December they were charged $1.37 on prepared sizes, the tariff being $1.55; $1.14 on pea, the tariff being $1.40; $1.14 on buckwheat, the tariff being $1.20.

Mr. BOWEN. What year?

Mr. SHEARN. December, '98.

1463 In January, 1899, they were charged $1.35 on prepared sizes, the tariff being $1.55. They were charged $1.17 on pea coal, with a tariff of $1.40. They were charged $1.15 on buckwheat, with a tariff of $1.20.

In February, 1899, they were charged $1.35 on prepared sizes, with a tariff of $1.55; on pea coal they were charged $1.20, the tariff being $1.40; on buckwheat they were charged $1.17, the tariff being $1.20.

In March, on prepared sizes they were charged $1.36, the tariff being $1.55; on pea coal they were charged $1.21, the tariff being $1.40; on buckwheat they were charged $1.16, the tariff being $1.20.

In April they were charged $1.39 on prepared sizes, with a tariff of $1.55; on pea coal $1.20, the tariff being $1.40; on buckwheat they were charged $1.15, the tariff being $1.20.

In May, on prepared sizes they were charged $1.39, the tariff being $1.55; on pea coal $1.17, the tariff being $1.40, and on buckwheat $1.12, the tariff being $1.20.

1464 In June they were charged $1.40 on prepared sizes, the tariff being $1.55; they were charged on pea coal $1.18, the tariff being $1.40, and on buckwheat they were charged $1.13, the tariff being $1.20.

In July they were charged $1.40 on prepared sizes, the tariff being $1.55; on pea coal $1.16, with a tariff of $1.40, and on buckwheat $1.14, with a tariff of $1.20.

What does this column out here on the right headed "Tariff, rice," mean?

Mr. MEEKER. No. 2 buckwheat, rice coal.

Mr. SHEARN. The tariff in July, the first quotation on rice coal—what size is that?

Mr. MEEKER. Smaller than buckwheat.

Mr. SHEARN. The smallest size?

Mr. MEEKER. There are smaller sizes.

Mr. CAMPBELL. There is a smaller size—culm.

Mr. SHEARN. That is between buckwheat and culm. In July, 1899, the tariff on rice was $1.20 and the payment on the charge to Mr. Meeker, after adjustment was made, was $1.00.

1465 In August, 1899, they were charged on prepared sizes $1.41, with a tariff of $1.55; on pea coal $1.14, with a tariff of $1.40; on buckwheat $1.14, with a tariff of $1.20, and on rice $1.00, with a tariff of $1.20.

In September, 1899, they were charged on prepared sizes $1.44, the tariff being $1.55; on pea coal, $1.14, the tariff being $1.40. They were charged on buckwheat $1.14, the tariff being $1.20, and on rice $1.00, the tariff being $1.20.

In October, 1899, on prepared sizes they were charged $1.49, the tariff being $1.55; on pea coal, $1.14, the tariff being $1.40; on buckwheat $1.16, the tariff being $1.20, and on rice, $1.00, with a tariff of $1.20.

In November they were charged $1.49 on prepared sizes, with a tariff of $1.55; on pea coal, $1.18, with a tariff of $1.40; on buckwheat, $1.16, with a tariff of $1.20, and on rice, $1.00, with a tariff of $1.20.

In December, 1899, on prepared sizes they were charged $1.51, the tariff being $1.55; on pea coal, $1.23, the tariff being $1.40; on buckwheat, $1.19, the tariff being $1.20, and on rice, $1.00, the tariff being $1.20.

In January, 1900, on prepared sizes they were charged $1.49, the tariff being $1.55—the tariff is $1.55 all the way through on pre-
1466 pared sizes They were charged on pea coal in January $1.24, the tariff being $1.40; on buckwheat, $1.19, the tariff being $1.20, and on rice, $1.00, the tariff being $1.20.

In February, prepared sizes, they were charged $1.45, with a tariff of $1.55; on pea coal, $1.25, with a tariff of $1.40; on buckwheat, $1.20, with a tariff of $1.20; rice, no quotation.

In March, with a tariff of $1.55 on prepared sizes they were charged 1.41; on pea coal they were charged $1.26, with a tariff of $1.40; on buckwheat, $1.22, with a tariff of $1.20, and on rice they were charged $1.00, with a tariff of $1.20.

In April on prepared sizes they were charged $1.43, with a tariff of $1.55; on pea coal, $1.25, with a tariff of $1.40; on buckwheat, $1.20, with a tariff of $1.20, and on rice, $1.00, with a tariff of $1.20.

In May, 1900, on prepared sizes they were charged $1.44, against a tariff of $1.55; on pea coal, $1.23, with a tariff of $1.40; on buckwheat, $1.23, against a tariff of $1.25, and on rice, $1.00 against a tariff of $1.25.

1467 In June, 1900, they were charged $1.43 against a tariff of $1.55; on pea coal, $1.23, against a tariff of $1.40; on buckwheat, $1.22, against a tariff of $1.25; and on rice $1.00, against a tariff of $1.25.

In July, 1900, they were charged $1.45 on prepared sizes, against a tariff of $1.55; on pea coal, $1.21, against a tariff of $1.40; on buckwheat, $1.19, against a tariff of $1.25; rice, $1.00; tariff, $1.25.

In August, prepared sizes they were charged $1.44, against a tariff of $1.55; pea coal, $1.22, against a tariff of $1.40; on buckwheat, $1.21, against a tariff of $1.25; on rice, $1.00, against a tariff of $1.25.

The CHAIRMAN. Had the rate on pea coal been advanced?

Mr. SHEARN. No; it was $1.40.

The CHAIRMAN. It was on buckwheat?

Mr. SHEARN. It was advanced five cents in May, 1900, and also on rice-coal sizes in May, 1900.

In September, they were charged $1.51 on prepared sizes, with a tariff of $1.55; on pea coal, $1.25, with a tariff of $1.40; on buck-
1468 wheat, $1.27, with a tariff of $1.25, and on rice, $1.00, with a tariff of $1.25.

In October there are no quotations.

In November they were charged $1.72 on prepared sizes, with a tariff of $1.55. You actually paid them that much more than the tariff rate?

Mr. MEEKER. In November and December?

Mr. SHEARN. Yes, sir.

Mr. MEEKER. I actually paid them that money, yes sir.

Mr. SHEARN. In November, on pea coal they were charged $1.32, with a tariff of $1.40; on buckwheat, $1.22, with a tariff of $1.25; on rice, $1.00, with a tariff of $1.25.

In December, 1900, on prepared sizes they were charged $1.72, with a tariff of $1.55; on pea coal, $1.37, with a tariff of $1.40; on buckwheat, $1.24, with a tariff of $1.25, and on rice, $1.00, with a tariff of $1.25.

1901, January, on prepared sizes they were charged $1.73.7, with a tariff of $1.55; they were charged on pea coal $1.42, with a
1469 tariff of $1.40; on buckwheat, $1.28, with a tariff of $1.25, and on rice, $1.10, with a tariff of $1.25.

In February, on prepared sizes they were charged $1.71, with a tariff of $1.55; on pea coal, $1.42, with a tariff of $1.40; on buckwheat, $1.27, with a tariff of $1.25, and on rice, $1.10, with a tariff of $1.25.

In March they were charged $1.68 on prepared sizes, against a tariff of $1.55; on pea coal, $1.44, with a tariff of $1.40; on buckwheat, $1.32, with a tariff of $1.25, and on rice, $1.10, with a tariff of $1.25.

In April, on prepared sizes, they were charged $1.54, with a tariff of $1.55; on pea coal, $1.40, with a tariff of $1.40; on buckwheat, $1.27, with a tariff of $1.25, and on rice, $1.10, with a tariff of $1.25.

In May, 1901, they were charged $1.57, with a tariff of $1.55, on prepared sizes; they were charged on pea coal $1.37, with a tariff of $1.40; on buckwheat, $1.27, with a tariff of $1.25, and on rice, $1.10, with a tariff of $1.25.

Mr. MOOT. That has been marked as an exhibit, has it?

Mr. SHEARN. Yes, sir; No. 28.

1470 Mr. GOWEN. Subsequent to the dates in this statement what rates have you paid?

Mr. MEEKER. Since that time?

Mr. GOWEN. Yes; the last month here is May, 1901.

Mr. MEEKER. I have been paying $1.55 under protest.

Mr. GOWEN. In other words, you have been paying the regular tariff rate?

Mr. MEEKER. Yes, sir; since that time.

Mr. GOWEN. And during the last seven months covered by this statement, when your rates overran the tariff rates, an adjustment was offered to you by the Lehigh Valley Railroad Company, based on $1.55?

Mr. MEEKER. November and December.

Mr. GOWEN. You declined a settlement of that kind?

Mr. MEEKER. Yes, sir; I declined to accept it when based on another adjustment.

Mr. GOWEN. You want to maintain your position that you had a right to pay on a certain percentage?

Mr. MEEKER. I wanted to maintain my position.

Mr. GOWEN. Even if that resulted in your paying more
1471 than the tariff rate?

Mr. MEEKER. Yes, sir; that is right.

Mr. BROWNELL. I understood you to say the other day that some of the coal you shipped reached tide water over the New York, Susquehanna & Western Railroad. Is that correct?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. Where does that coal originate—on what railroad?

Mr. MEEKER. It originates on the Wilkesbarre & Eastern Railroad.

Mr. BROWNELL. At what colliery?

Mr. MEEKER. At the Ridgewood colliery.

Mr. BROWNELL. In Pennsylvania?

Mr. MEEKER. In Pennsylvania.

Mr. BROWNELL. The Wilkesbarre & Eastern Railroad—where does that extend, from what point?

Mr. MEEKER. It extends from the Wyoming region to Stroudsburg.

Mr. BROWNELL. All in Pennsylvania?

Mr. MEEKER. Yes, sir.

1472 Mr. BROWNELL. As I understand, that was shipped under an old contract made a number of years ago.

Mr. MEEKER. Shipped under a contract made nine years ago, I think, with the Wilkesbarre & Eastern Railroad.

Mr. BROWNELL. With that company?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. For shipment over its own line from the mine to Stroudsburg and then forwarding it over the connecting railroad to tide water?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. And then what you have shipped over the Wilkesbarre & Eastern and connection has always been under that contract?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. Do you remember that a number of years ago the control and management of the Wilkesbarre & Eastern Railroad Company changed?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. How many years ago was that?

Mr. MEEKER. Three or four.

Mr. BROWNELL. And this contract that you speak of had been in force then five years or more?

Mr. MEEKER. Yes, sir.

1473 Mr. BROWNELL. Is it a fact that the new management of the Wilkesbarre & Eastern Railroad Company endeavored to induce you to surrender the contract and arrangement you have spoken of?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. And you declined to do so?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. You declared you would stand on your legal rights under the contract?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. And have insisted upon your rights to ship over the Wilkesbarre & Eastern and connecting road, and hold the Wilkesbarre & Eastern responsible for that arrangement?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. Do you know whether or not there is any other individual shipper of coal over the Wilkesbarre & Eastern Railroad now except yourself?

Mr. MEEKER. I think there is not. I never knew of any.

Mr. BROWNELL. There has not been any since the new management has been in control of that railroad?

1474 Mr. MEEKER. I do not think there has ever been since that contract was made.

Mr. BROWNELL. Do you know there ever was, from the time when you began to ship or from the time that the railroad was completed?

Mr. MEEKER. No, sir.

Mr. BROWNELL. What was the date of that contract, if you recollect?

Mr. MEEKER. 1892, I think; January, 1892.

Mr. BROWNELL. Do you recollect that was made at or about the time of the building of this Wilkesbarre & Eastern Railroad?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. That was built about that time?

Mr. MEEKER. About that time.

Mr. BROWNELL. About 1892?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. Over what railroad had you shipped, or had you shipped from that locality at all?

Mr. MEEKER. We had never shipped from that colliery.

Mr. BROWNELL. Do you say the fact is that at no time since

1475 that railroad had been constructed—since that time, since that railroad was constructed—has any other individual shipped over the line of the Wilkesbarre & Eastern Railroad?

Mr. MEEKER. Not to my knowledge.

Mr. BROWNELL. In stating the arrangement the other day which you have with the Wilkesbarre & Eastern Railroad, the rate that you mentioned referred only to prepared sizes, I think.

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. And there were other rates provided and higher ones for the sizes smaller than prepared sizes?

Mr. MEEKER. Yes, sir.

Mr. BROWNELL. A higher percentage?

Mr. MEEKER. A higher percentage; yes, sir.

Com'r PROUTY. Now, Mr. Meeker, when you paid a rate of $1.44, what was the price of coal?

Mr. MEEKER. Well, $1.44 was just forty per cent of the tide-water average for coal.

Com'r PROUTY. The price was $3.50.

Mr. MEEKER. Yes; if that figures out that way.

Com'r PROUTY. And when you paid $1.72, the price of coal was $4.30?

1476 Mr. MEEKER. Yes, sir.

Com'r PROUTY. Now, you claim that since the contract had beenentered into with other operators on the sixty-five per cent basis, that you ought to pay not $1.72, but thirty-five per cent of $4.30, which would be $1.50½.

Mr. MEEKER. Yes, sir.

Com'r PROUTY. And the rates paid indicate in all cases the price of the coal at tide water? Now, is that the price at which you sold the coal?

Mr. MEEKER. No; it is what is is known as the Ruley averages—the average received by the companies.

Com'r PROUTY. The same price would cover the sales by the independent operators to the railroad company?

Mr. MEEKER. Yes, sir.

Com'r PROUTY. You claim that you should be treated just as the other operators?

Mr. MEEKER. Yes, sir.

Com'r PROUTY. That is all.

Mr. ROSS. You spoke the other day about a number of coal dealers in New York. Can you give me an idea of how many bituminous coal dealers there are here?

Mr. MEEKER. Well, you mean middlemen?

1477 Mr. ROSS. Yes, sir.

Mr. MEEKER. I have not the slightest idea.

Mr. ROSS. Can you give me an estimate?

Mr. MEEKER. No; I could not. I do not do any bituminous business.

Mr. ROSS. But there are a good many?

Mr. MEEKER. Yes, sir.

Mr. ROSS. A thousand?

Mr. MEEKER. I do not think there are a thousand, but up in the hundreds.

Mr. ROSS. There are a good many middlemen in the hard-coal business, too, are there not?

Mr. MEEKER. It is according to what you call middleman.

Mr. ROSS. What do you call middleman?

Mr. MEEKER. I call a man a middleman who buys the coal at the breaker and transports it and sells it down here. Of course there are a great many concerns in the hard-coal business that buy from coal companies and sell it here.

Mr. ROSS. You call them dealers?

1478 Mr. MEEKER. I believe you would call them commission men.

Mr. ROSS. How many hard coal commission men are there in New York—about?

Mr. MEEKER. Twenty-five of any size, and there are a great many smaller ones.

Mr. ROSS. Who buy coal in the open market where they can buy it the cheapest?

Mr. MEEKER. Yes, sir.

Mr. ROSS. Some buy at the mine and some buy of the large coal companies.

Mr. MEEKER. There are very few who buy at the mines. There is very little coal free not controlled by the companies.

Mr. ROSS. Where do the bituminous dealers get their coal?

Mr. MEEKER. I do not know about that business.

Mr. ROSS. You do not deal in bituminous coal?

Mr. MEEKER. No, sir.

Com'r PROUTY. Something has been said about wastage. Is there any such factor as that in your transactions where you buy coal at the mine

and the railroad company transports that and delivers it on board
1479 the boat. Do you get just as much coal on board the boat as you buy at the mine?

Mr. MEEKER. In buying at the mine the operator makes an allowance in the weight of the coal.

Com'r PROUTY. So that the operator and not the dealer loses the wastage?

Mr. MEEKER. That does not take care of the entire wastage. That about divides the loss. There is about two per cent wastage on prepared sizes.

Com'r PROUTY. And as you handle the coal there is about a loss of half of that?

Mr. MEEKER. Yes, sir.

Mr. SHEARN. About one per cent?

Mr. MEEKER. Yes, sir; one per cent.

The CHAIRMAN. Will you prepare a statement in regard to the amount of prepared sizes of coal in 1896 and 1897—the average price—and mail it to the Commission?

Mr. SHEARN. That is all, Mr. Meeker.

Witness excused.

1480 CHARLES RUNYON, a witness called on behalf of complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Runyon, do you live in this city?

Mr. RUNYON. Yes, sir.

Mr. SHEARN. And what is your business?

Mr. RUNYON. The coal business.

Mr. SHEARN. How long has that been your business?

Mr. RUNYON. For forty years.

Mr. SHEARN. With what companies are you connected?

Mr. RUNYON. With the Communipaw Coal Company.

Mr. SHEARN. And the Manhattan Coal Company?

Mr RUNYON. No, sir; we lease the Manhattan Company.

Mr. SHEARN. And what is the business of the Communipaw Coal Company?

Mr. RUNYON. To furnish coal to the steamboats and tugs in the harbor, and also to the large buildings downtown for steam purposes.

Mr. SHEARN. Then you are both a dealer in anthracite and bituminous coal?

1481 Mr. RUNYON. Yes, sir; we do some business with bituminous coal.

Mr. SHEARN. You have done a great deal of business in bituminous, have you not?

Mr. RUNYON. Last year.

Mr. SHEARN. You buy your anthracite coal from what company?

Mr. RUNYON. Mostly from the Lehigh and Wilkesbarre.

Mr. SHEARN. Do you buy your coal from them delivered on board or at the trestle?

Mr. RUNYON. Delivered on the trestle.

Mr. SHEARN. So that you do the putting of it on board yourself?

Mr. RUNYON. Yes, sir.

Mr. SHEARN. You lease terminal facilities from the railroad company, do you?

Mr. RUNYON. Yes, sir.

Mr. SHEARN. And hire your own men to put it on board?

Mr. RUNYON. Yes, sir.

Mr. SHEARN. What have you found to be the expense per ton of putting anthracite coal on board?

Mr. RUNYON. The way we have to put it on board it costs us from thirty to thirty-five cents a ton.

1482 Mr. SHEARN. Do you know which is the more expensive to put on board, anthracite or bituminous?

Mr. RUNYON. I think bituminous costs us a little more.

Mr. SHEARN. Why?

Mr. RUNYON. Because it don't run so freely. The chutes were not made for bituminous coal and are not steep enough. There is more friction, in other words, and it has to be shoved.

Mr. SHEARN. That is all.

Mr. GOWEN. We have no questions.

The CHAIRMAN. Then you are excused, Mr. Runyon.

Witness excused.

1483 W. W. RULEY, a witness called on behalf of complaintant, having been duly sworn, testified as follows:

Mr. SHEARN. Where do you live, Mr. Ruley?

Mr. RULEY. Philadelphia.

Mr. SHEARN. What is your business?

Mr. RULEY. Statistician and publisher.

Mr. SHEARN. What do you have to do with getting up coal statistics for the coal companies?

Mr. RULEY. Well, we prepare a good many statistics, look after the question of production, of the geographical distribution of anthracite coal.

Mr. SHEARN. How long have you been doing that?

Mr. RULEY. Personally, I have been doing it for about thirteen years. The organization which is known as the Bureau of Coal Statistics has been in existence for thirty odd years.

Mr. SHEARN. What is your method of collecting statistics of the prices realized for the sale of coal at different points?

Mr. RULEY. At different points?

Mr. SHEARN. Say at tide water, New York.

1484 Mr. RULEY. Well, it is simply that the prices are furnished monthly by the large coal companies.

Mr. SHEARN. They furnish them to you?

Mr. RULEY. Yes, sir.

Mr. SHEARN. They send in a monthly statement to you of the prices they realize at tide water on the different sizes of coal?

Mr. RULEY. Yes, sir.

Mr. SHEARN. What companies send those figures to you?

Mr. RULEY. The Philadelphia & Reading Coal & Iron Company, the Lehigh Valley Coal Company, the Lehigh, Wilkesbarre, the D., L. & W., and the Erie; that is, the Erie's companies, that is the Hillside Coal & Iron Company, and the Pennsylvania Coal Company, and Coxe Bros. & Company.

Mr. CAMPBELL. The Lehigh Coal Navigation Company?

Mr. RULEY. No, sir; not the Lehigh Coal & Navigation.

Mr. SHEARN. Do they also send you statements of the amount sold, the number of tons sold?

Mr. RULEY. Yes, sir.

Mr. SHEARN. Of each size?

1485 Mr. RULEY. Yes, sir; that is the only way an average could be struck. They send the total amount of each size and the aggregate amount that is realized for that size of coal.

Mr. SHEARN. And you figure out what that amounts to per ton?

Mr. RULEY. Yes, sir.

Mr. SHEARN. How long have those companies been furnishing those figures?

Mr. RULEY. We have compiled those figures since the beginning of 1901—1901, 1902, and up to date.

Mr. SHEARN. Since January, 1901?

Mr. RULEY. Yes, sir.

Mr. SHEARN. Since January, 1901, have you been furnishing the results of those computations to those same companies?

Mr. RULEY. Yes, sir.

Mr. SHEARN. You are employed to do that work by those companies, are you not?

Mr. RULEY. Of course we get some compensation for it.

Mr. SHEARN. From whom do you get compensation?

Mr. RULEY. From the companies I have mentioned.

1486 Mr. SHEARN. You get compensation based upon the tonnage, don't you, for each month you figure on?

Mr. RULEY. Yes, sir. I might say, however, n respect to that, that the compensation which we get was based on the question of tonnage shipped to market. That method of compensation has been in existence for years and that is the method which is pursued now.

Mr. SHEARN. Each company's share of the expense to you is determined by their respective tonnage?

Mr. RULEY. Yes, sir; not in respect to tide-water tonnage, but in respect to tonnage to all markets.

Mr. SHEARN. Do you also keep track of the prices realized for anthracite coal at Port Richmond?

Mr. RULEY. No; the only concern I have with prices is simply the price of coal realized in New York Harbor.

Mr. SHEARN. And the amount sold in New York Harbor?

Mr. RULEY. Yes, sir.

Mr. SHEARN. You spoke of the geographical distribution of coal. What statistics do you get showing the geographical distribution of coal?

1487 Mr. RULEY. Well, we prepare each year—of course it is more or less of an approximate statement—a statement showing the markets to which the coal go, the amounts which would go to New York and New Jersey, the New England States and to Canada, and the West and South.

Mr. SHEARN. Where do you get your data for those figures?

Mr. RULEY. From the producing companies; directly from the producing companies.

Mr. SHEARN. Do those figures show how much coal each of those companies sends to these different localities?

Mr. RULEY. No; they don't show that—simply the aggregate tonnage.

Mr. SHEARN. The aggregate tonnage; but no one company can give you the tonnage of all.

Mr. RULEY. Of course it is necessary for me to get the details in order to prepare the statement.

Mr. SHEARN. You do get those details?

Mr. RULEY. Yes, sir.

Mr. SHEARN. Do you keep a record of those details? Do you keep a record of the tonnage of each company shipped to each of these principal points of distribution?

1488 Mr. RULEY. Well, you see, as I tell you, that the information is necessarily rather approximate. You can not absolutely locate coal. For instance, coal may be shipped down here to New York proper; it may be consigned here apparently for use right in this immediate vicinity, and then it may be reconsigned to some other place. So you see the figures are somewhat approximate in that respect, and we cannot rely on the figures entirely that are furnished by the companies. We check them up in various ways, finding out about the consumption as it is reported by various boards of trade in the large cities, in the large centres, and in that way arrive at the approximate tonnage. We do not pretend that it is anything more than approximate. It is gotten up for the purpose of showing what is being done in the anthracite market and how far anthracite can be expected to extend as a commercial product.

1489 Mr. SHEARN. Have you seen this volume, called the Coal Trade of the United States, issued by Mr. Austin, the chief of the Bureau of Statistics of the Treasury Department?

Mr. RULEY. I think he sent me a copy of that; yes.

Mr. SHEARN. Do you have anything to do with the getting up of the data for that? Is this based upon your data?

Mr. RULEY. I do not remember that we furnished him any, but I did not look at his report at all. I simply remember he sent a report of that kind to the office.

Mr. SHEARN. You also keep track, don't you, of the shipments of coal, the tonnage shipments of coal, over the lines of each of these respective railway companies?

Mr. RULEY. Yes.

Mr. SHEARN. That is, over the lines of the railway companies owning these coal companies you have spoken of?

Mr. RULEY. Yes.

Mr. SHEARN. You get those figures from the companies, too; how long have you been keeping those statistics?

1490 Mr. RULEY. As I told you, those statistics have been kept for over thirty years. I have been doing it for about thirteen years.

Mr. SHEARN. Do you furnish a statement of the tonnage of each of the companies to each of the other companies?

Mr. RULEY. Yes.

Mr. SHEARN. And figure out the percentages—the respective percentages carried by each of the companies with respect to one another?

Mr. RULEY. You mean the percentage of the total amount?
Mr. SHEARN. Yes.
Mr. RULEY. Yes; that is shown on the statement.
Mr. SHEARN. You furnish such a statement to the companies once a month?
Mr. RULEY. Yes.
Mr. SHEARN. About what time in the month?
Mr. RULEY. Oh, about the 7th or 8th of the month, I suppose.
Mr. SHEARN. Covering the preceding month?
Mr. RULEY. Yes; just as soon as we can get it after the 1st of the month.
1491 Mr. SHEARN. Did you have anything to do with keeping track of the prices realized at tide prior to January, 1901?
Mr. RULEY. No; I did not.
Mr. SHEARN. Who did that, your partner?
Mr. RULEY. Oh, no. I don't know how that was done. I don't think that there was any general average kept prior to that time. I am not sure. I do not know about it.
Mr. SHEARN. Did you keep any record prior to 1901, January, of the prices realized for the sale of different sizes of coal at tide?
Mr. RULEY. No, I did not; I was not interested in it prior to that time.
Mr. SHEARN. January, 1901, was when you became interested?
Mr. RULEY. Yes; I think we have, perhaps for one or two months prior to that.
Mr. SHEARN. Will you furnish to the Commission a tabulation or a copy of your tabulations made since January, 1901, showing the number of tons of coal, the different sizes sold at tide water, month by month, since that time, and the prices realized therefor, and the
1492 average price on each size during the months?
Mr. MOOT. Why stop there, Mr. Shearn; why stop at 1901?
Mr. SHEARN. I say from 1901.
Mr. MOOT. Why do you stop there?
Mr. SHEARN. That is as far back as he has been collecting them.
Mr. CAMPBELL. He said 1891.
Mr. SHEARN. Didn't you say 1901?
Mr. RULEY. 1901.
Mr. CAMPBELL. I thought he said 1891.
Mr. RULEY. 1901—that is, in respect to the prices. Now, what is the question?
Mr. SHEARN. Will you furnish a statement to the Commission of the number of tons of anthracite coal, stating each size sold each month at tide water since January 1, 1901; also the prices realized therefor; also the average price realized therefor as shown by your reports to the companies?
Mr. RULEY. Am I to understand that you ask for the number of tons from each company?
Mr. SHEARN. The number of tons sold at tide by each company as reported to you.
1493 Mr. RULEY. Of each company?
Mr. SHEARN. Yes; by each company. Will you do that, Mr. Ruley?

Mr. RULEY. I, personally, have no objection to doing it, unless there is an objection on the part of counsel for the companies.

Mr. CAMPBELL. If you are willing to volunteer the labor, and for the benefit of the Commission and the gentleman, I do not know that we would have any objection.

Mr. RULEY. I do not see there is any objection to it. I have none.

Mr. SHEARN. Is there any objection?

Com'r PROUTY. The railroad companies can furnish that themselves, I suppose——

Mr. CAMPBELL. We can furnish the copies.

Mr. SHEARN. Then you will furnish them? Will you also furnish a copy of the monthly statements that you have issued to each of the railroad companies or to each of the coal companies since that time——

Mr. CAMPBELL. I submit you are imposing a good deal upon a private gentleman.

Mr. SHEARN (continuing). Showing the tonnage and the percentage of the total tonnage?

1494 Mr. RULEY. For what period of time?

Mr. MOOT. How far back, Mr. Shearn?

Mr. RULEY. That reports that Mr. Baer——

Mr. SHEARN. Those reports that Mr. Baer put in cover all your reports during that time?

Mr. RULEY. Yes.

Mr. SHEARN. Then we do not need those over again.

Mr. RULEY. They showed for all those companies, I understood him to say, for two years.

Mr. CAMPBELL. Have you got those tables here that Mr. Baer handed in?

Mr. SHEARN. No; I have not got them. They were left with the stenographer. But they are in the record.

Mr. CAMPBELL. I was going to suggest that an opportunity be left to Mr. Ruley to examine them.

Mr. SHEARN. Weren't you compiling any prices prior to 1901?

Mr. RULEY. None, whatever.

Mr. SHEARN. Your firm has been in this statistical business for a number of years?

Mr. RULEY. Yes; but I tell you we had no interest whatever in prices; never compiled any, never issued any, had nothing to do with them in any way or form prior to 1901.

1495 Mr. SHEARN. As I recollect it, Mr. Meeker understood that they were Mr. Ruley's figures. Of course the figures were not furnished by Mr. Ruley to Mr. Meeker. He got his figures from the railroad company.

Mr. RULEY. I think I could make an explanation of that matter of figures and prices prior to 1901, under whatever contracts they were—I am not familiar with what they were. I think that settlements were made simply on average prices of individual companies, or perhaps average prices of one or two companies, and I understood at the beginning of 1901 that that was unsatisfactory to some individual operators, because the prices would vary so much between the individual companies and one individual operator would get the advantage of another, so that it was

decided upon averaging prices of all companies, and we started in to compile those figures at that time.

Mr. SHEARN. Where did you get that understanding, Mr. Ruley?

Mr. RULEY. What, sir?

Mr. SHEARN. Where did you get that understanding, from your employers?

1496 Mr. RULEY. Oh, no; it was just a general idea. I had heard it here and there, and several places. I would hear individual operators complaining that the prices of one company would be different from the prices of another company. There was too much variation in prices.

Mr. SHEARN. You have not heard any complaints since?

Mr. RULEY. No; naturally, when the prices are all uniform, they would not. There is an average price struck now, and the settlement is on that——

Mr. BROWNELL. You still find that the individual prices of the separate companies vary?

Mr. RULEY. Oh, certainly.

Mr. BROWNELL. To a marked degree. Covering what range?

Mr. SHEARN. Now perhaps the figures will speak for themselves.

Mr. RULEY. I could not say that. The figures will show for themselves.

Mr. CAMPBELL. Will you examine these papers and see if they do cover what was understood?

Mr. SHEARN (referring to papers). There is a statement here

1497 for every month from January, 1901, to and including March, 1903, entitled "Statement of anthracite coal tonnage."

Mr. MOOT. That is an error; June, July, and August of 1892 are not there.

Mr. SHEARN. January, February, March, April, May, June——

Mr. MOOT. 1901 is complete, but 1902 you will find June, July, and August missing. I looked them over with care when they were offered and saw that they were marked.

Mr. SHEARN. I hold in my hand a series of papers entitled "Statements of anthracite coal tonnage for each month from January 1, 1901, to and including March, 1903, except the months of June, July and August, 1902." Will you look at these and see if they are copies; if they are reports given up by you and furnished by you to the companies that you have named? (Papers handed to witness).

Mr. RULEY (after examining papers). They seem to be all right.

Mr. SHEARN. Yes. Those are your reports and they are correct.

Mr. RULEY. Yes.

1498 Mr. SHEARN. Now, in addition to that you understand what we want in addition to these?

Mr. RULEY. The question of prices.

Mr. SHEARN. The question of prices—that is, the number of tons of each size sold by each of these different companies at tide during each of these months, and the price realized by each of the companies, and then the average price.

Mr. RULEY. I understand.

Mr. SHEARN. That is all.

Mr. CAMPBELL. If your honor please, I would thank you for permission to recall the witness at some future time for cross-examination. We must have an opportunity to investigate the substance of these tables as bearing on the testimony of others we have heard. I would like to recall Mr. Ruley for cross-examination at some future time.

Mr. BROWNELL. If your honor please, I would suggest that when these statements are prepared and produced by the witness, that the witness be here with them, so that when they are offered it will be determined whether any examination is required, or any cross-exami-
1499 nation in connection with them. I presume there will be no objection outside of the objection possibly on the question of materiality. Is that satisfactory to you, Mr. Shearn?

Mr. SHEARN. Why, perfectly.

The CHAIRMAN. Is that the understanding, that Mr. Ruley will appear with the statement which he has consented to prepare, at that time, at some future session?

Mr. BROWNELL. At the next session.

Mr. SHEARN. Yes; but you will furnish me with a copy of those statements before the next session? How long will it take you to get that up?

Mr. RULEY. It will take some little time to get them up in the form you want them, but I understood that the Commission was to adjourn to-day and that the next session——

Mr. SHEARN. Can you get them in ten days?

Mr. RULEY. I presume so.

Mr. SHEARN. Will you let me have the copy in ten days?

Mr. RULEY. Unless there is some objection to it.

Mr. MOOT. I have no objection.

1500 Com'r PROUTY. The coal prices you are to furnish them now are those to tide water?

Mr. RULEY. Yes.

Com'r PROUTY. Then I understand you consent to prepare that statement and furnish it to Mr. Shearn as soon as you reasonably can, and then I assume that some arrangement will be made for Mr. Ruley's attendance at the next hearing?

Mr. SHEARN. Yes; we will have him subpœnaed.

The CHAIRMAN. With that understanding you are excused.

1501 WILLIAM G. PAYNE, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. What is your full name?

Mr. PAYNE. William G. Payne.

Mr. SHEARN. P-a-y-n-e?

Mr. PAYNE. P-a-y-n-e.

Mr. SHEARN. Where do you live?

Mr. PAYNE. Kingston, Pennsylvania.

Mr. SHEARN. What is your business?

Mr. PAYNE. Coal operator.

Mr. SHEARN. On your own account? You are a private operator?

Mr. PAYNE. Yes, sir.

Mr. SHEARN. How many collieries do you operate?

Mr. PAYNE. One.

Mr. SHEARN. What is the name of it?

Mr. PAYNE. The East Boston Coal Company.

Mr. SHEARN. Where is that located?

Mr. PAYNE. Well, strictly speaking, it is located in the town of Luzerne; the line of Kingston and Luzerne just about join there, but it is, strictly speaking, Luzerne.

1502 Mr. SHEARN. What railroads reach your line?

Mr. PAYNE. The Delaware, Lackawanna & Western and the Lehigh Valley.

Mr. SHEARN. Tracks from each of them run to your breaker?

Mr. PAYNE. The tracks of each of them—we own our own switch that runs from the breaker down and that switch connects with the railroad of the Lehigh Valley and the railroad of the Lackawanna & Western.

Mr. SHEARN. You have built your own switch and paid for it?

Mr. PAYNE. Yes, sir.

Mr. SHEARN. That is, the road bed and tracks, etc.?

Mr. PAYNE. Yes, sir.

Mr. SHEARN. And that switch connects with both of these railroads?

Mr. PAYNE. Yes, sir.

Mr. SHEARN. Which of the railroads do you ship your coal over coming to tide water?

Mr. PAYNE. Well, over either of them.

Mr. SHEARN. Do you ship over both of them?

Mr. PAYNE. No; only on line business.

Mr. SHEARN. Both of them on line business?

1503 Mr. PAYNE. But I say, on tide water, I do not ship to tide water over either of those roads.

Mr. SHEARN. Do you ship to tide water at all?

Mr. PAYNE. No, sir.

Mr. SHEARN. Do you sell any of your coal to a coal company?

Mr. PAYNE. None of the railroad companies at all. We sell to a private company.

Mr. SHEARN. What company?

Mr. PAYNE. Stickney & Cunningham, a private firm.

Mr. SHEARN. Stickney & Cunningham Company of this city?

Mr. PAYNE. Yes, sir.

Mr. SHEARN. That is, such part of your coal that comes to tide water?

Mr. PAYNE. I do not know where it goes. We send it to them at Nanticoke—Nanticoke is about seven miles below the breaker—and it scatters from there, and I do not know where the coal goes after that.

Mr. SHEARN. Do you sell some fixed percentage of the output of your mine to them?

Mr. PAYNE. Well, my impression is that we give them about sixty or seventy per cent.

1504 Mr. SHEARN. Of your output?

Mr. PAYNE. Of our output.

Mr. SHEARN. Do you sell it to them on a basis of prices realized for at tide?

Mr. PAYNE. Yes, sir.

Mr. SHEARN. You have no contract, then, with a coal company owned by a railroad company?

Mr. PAYNE. No, sir.

Mr. SHEARN. That is all.

1505 WILLIAM H. TRUESDALE, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. You are the president of the Delaware & Lackawanna Railroad Company, are you not?

Mr. TRUESDALE. I am; yes, sir.

Mr. SHEARN. It is the "Road of Anthracite" you hear about?

Mr. TRUESDALE. Sometimes so termed I believe; yes, sir.

Mr. SHEARN. That company is incorporated under the laws of what State?

Mr. TRUESDALE. Pennsylvania.

Mr. SHEARN. What is its capital stock?

Mr. TRUESDALE. About twenty-six million dollars.

Mr. SHEARN. What region in the anthracite coal fields does it tap?

Mr. TRUESDALE. Known as the Wyoming region.

Mr. SHEARN. What is your tide water terminal?

Mr. TRUESDALE. Hoboken.

Mr. SHEARN. Is that your only one?

Mr. TRUESDALE. Yes, sir.

1506 Mr. SHEARN. Do you own the terminal or do you lease it?

Mr. TRUESDALE. We own it. That is, one of the lines, the Morris & Essex Railroad Company has the legal ownership, but that company with all its property is leased in perpetuity to the Delaware, Lackawanna & Western Railroad Company.

Mr. SHEARN. I noticed in your annual report for 1901 an item of $142,000 for rentals in New York terminals. What terminals does that refer to?

Mr. TRUESDALE. On this side of the river. They are terminals where our miscellaneous freight is handled.

Mr. SHEARN. Do you pay any rent to this company you have mentioned for the use of these terminals?

Mr. TRUESDALE. Why, the rental paid is a certain dividend on its capital stock and the interest on its bonded indebtedness.

Mr. SHEARN. Whatever you pay for interest on capital stock and on bonded indebtedness is supposed to cover the use of these terminals?

Mr. TRUESDALE. Yes.

Mr. SHEARN. And nothing else?

1507 Mr. TRUESDALE. It covers all the lines of that company, which extends through northern New Jersey, including the terminals at Hoboken.

Mr. SHEARN. Do you know how much of that is set apart for the use of the terminals?

Mr. TRUESDALE. No, I do not know; there is no provision of the rentals.

Mr. SHEARN. Do you know what is or would be a fair rental of those terminals?

Mr. ROSS. I object, if the court please, as not material. The witness has said he don't know. It seems to me the inquiry is immaterial.

The CHAIRMAN. I understand you ask what he considers a fair rental value of those terminals. I see no objection to it.

Mr. TRUESDALE. I could not give a fair estimate of that. I never figured it out on any such basis.

Mr. SHEARN. Do you know what the terminal costs?

Mr. TRUESDALE. I do not.

Mr. SHEARN. From your knowledge of what the terminal consists of and of the cost of building such a structure, what in your judgment is the terminal worth?

1508 Mr. TRUESDALE. Well, I really have no knowledge of what property, such as our terminal property, the bare property, is worth to-day. I have no knowledge of any recent transactions which would give me an idea of their value; as to the improvements, I think they were made, most of them, a good many years ago, long prior to my connection with the company, and I can not give you any accurate estimate of their value.

Mr. SHEARN. Can you tell me the total that you pay out in each year then, to this company you named, as interest on its bonds and dividends on its stock?

Mr. TRUESDALE. I could not. I haven't it in mind.

Mr. SHEARN. Would that appear in your annual report?

Mr. TRUESDALE. I do not think our rentals for the different properties we leased are shown separately for each property. The aggregate is there of all of them.

Mr. SHEARN. What does its terminal consist of?

Mr. TRUESDALE. Well, it has a water front, I should say something like three quarters of a mile in length on the Hudson and North River, on which are built docks for handling coal, houses for handling miscellaneous freight.

Mr. SHEARN. What are the docks built of?

1509 Mr. TRUESDALE. Oh, mostly timber.

Mr. SHEARN. Timber?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Then there are trestles there and coal pockets?

Mr. TRUESDALE. Coal trestles and pockets in them; yes, sir.

Mr. SHEARN. How many coal docks are there?

Mr. TRUESDALE. We have now two.

Mr. SHEARN. Two coal docks?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Do you know what those coal docks cost?

Mr. ROSS. I object.

Mr. TRUESDALE. I do not.

Mr. SHEARN. Do you know what they are worth?

Mr. ROSS. I object——

Mr. TRUESDALE. I do not.

Mr. ROSS. It is immaterial what they cost.

The CHAIRMAN. Well, he says he don't know.

Mr. SHEARN. How large a part of your terminal facilities are devoted to handling anthracite coal traffic?

Mr. TRUESDALE. Well, I could only give a bare guess at that.

1510 I should say from 30 to 40 per cent, that including the frontage and the property on which the tracks are located upon which our coal is handled.

Mr. SHEARN. The Delaware, Lackawanna & Western Railroad Company owns and operates coal mines, does it not?

Mr. TRUESDALE. It does; yes, sir.

Mr. SHEARN. There is a clause in its charter giving it that authority?

Mr. TRUESDALE. It has that right.

Mr. SHEARN. It has that right under its charter. And its mines are mostly located in what region?

Mr. TRUESDALE. In the Wyoming region and in the vicinity of Scranton.

Mr. SHEARN. How many collieries do you own?

Mr. TRUESDALE. Well, it is about 20. My recollection is 21, but I may err in that.

Mr. SHEARN. When did you become president of the company?

Mr. TRUESDALE. In March, 1899.

Mr. SHEARN. Have you added any collieries since that time?

Mr. TRUESDALE. No, sir. I think we have built no new collieries since my connection.

Mr. SHEARN. How many collieries are you operating?

1511 Mr. TRUESDALE. We are operating all that we own but one.

Mr. SHEARN. All but one?

Mr. TRUESDALE. All but one; yes, sir.

Mr. SHEARN. How many collieries were you operating in 1900?

Mr. TRUESDALE. I think we were operating all we owned then; that is, more or less; we did not operate them all continuously.

Mr. SHEARN. What have you found to be the capacity of your collieries, these 21 collieries, the annual capacity?

Mr. TRUESDALE. The year 1901 was the largest; in the year 1901 our collieries made the largest output of any year in the history of the country. We have in addition to our collieries—we had at that time—some two or three washeries, washeries engaged in washing out the finer sizes of coal from the old culm banks.

Mr. SHEARN. You are adding to your washeries?

Mr. TRUESDALE. We are increasing them as the demand for coal increases.

1512 Mr. SHEARN. That is coal used for steam purposes?

Mr. TRUESDALE. Yes, sir. During the year 1901, as I recollect it, our production from our collieries and washeries was a little under six million tons.

1513 Mr. SHEARN. In your annual report for the year ending December, 1901, the total sales of coal are stated to have been 7,334,255 tons. Now, some part of that was purchased coal, was it not?

Mr. TRUESDALE. I think, Mr. Shearn, if you will refer to an item in that report you will find that the total coal tonnage of our company, mined and purchased, was 7,513,000 tons. Of that tonnage 1,620,000 tons was

purchased, leaving, as I say, 5,900,000 tons; that is, for our collieries and washeries both.

Mr. SHEARN. The capacity of your collieries and washeries is about 6,000,000 tons?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Have you increased their capacity very much in the last few years?

Mr. TRUESDALE. We are making constant changes in the machinery and in the arrangement of them that increase the output of the collieries for a working day or per hour run, to some extent.

Mr. SHEARN. To what extent?

Mr. TRUESDALE. I can not say. It varies with the different
1514 operations. The older operations, we are able to make a larger increase; as to the more modernly built, we can make less increase, because they are more up to date.

Mr. SHEARN. What was your production in 1899?

Mr. TRUESDALE. I have not those figures with me. I can get them and give them to you.

Mr. SHEARN. Including in your directorate is Mr. J. Rogers Maxwell, is he not?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Representing the Reading and Central Railroad of New Jersey?

Mr. TRUESDALE. No, sir; representing the Delaware, Lackawanna & Western stockholders.

Mr. SHEARN. Your annual report for 1901 shows that you received from the transportation of coal in that year $10,749,344.49, which was an increase of $2,214,020.80 over the preceding year; that is to say, an increase of 25.94 per cent, and that your net earnings from operation of your property, less taxes paid, were $9,122,215.83. Do you recollect the figures?

Mr. TRUESDALE. I do not.

1515 Mr. SHEARN. You have not those figures in mind, but your recollection is not different from those figures stated, is it?

Mr. TRUESDALE. No, sir. They are in our annual report. I assume that is a copy [referring to pamphlet in Mr. Shearn's hand] and that they are correct.

Mr. SHEARN. Yes; I am reading from your annual report. Your company had left as a result of its operation, after paying all charges, including interest on bonds, rentals of terminals, and everything else, $3,030,054.47, and you also paid dividends of seven per cent on your capital stock, and you had left from your operations a balance that went to surplus—$1,096,100.47. Those figures are correct, are they not?

Mr. TRUESDALE. I assume that that is a copy of our annual report as distributed, and if so, they are correct.

Mr. ROSS. They are correct. I have a copy here.

Mr. SHEARN. I will offer this report in evidence.

(The same was marked "Exhibit No. 28.")

Mr. SHEARN. Your company does not appear to be such an object of charity as the Reading was represented to be?

Mr. ROSS. I object. That is a wholly improper remark for counsel to make.

Mr. SHEARN. In other words, your report shows that you are doing a very profitable business.

1516 Mr. TRUESDALE. Our business in 1901 was a profitable business.

Mr. SHEARN. Do you know what the surplus of the D., L. & W. was at the end of the year 1901?

Mr. ROSS. I have permitted this report to go in without objection, but our company has been organized since 1832, and if they have accumulated a surplus since that time I do not see that that is material here.

Com'r PROUTY. Do you know of anything that is material to this question?

Mr. ROSS. Yes, sir; anything bearing on the reasonableness of the rates would be material.

Com'r PROUTY. Just what would that be?

Mr. ROSS. The cost—it seems to me that that is the material question.

Mr. SHEARN. Mr. Thomas defied anybody yesterday to tell the cost. Your annual report for 1901 shows that the company had a surplus on that day of $16,719,626.92.

Mr. MOOT. Now, I must submit to this Commission that we are getting altogether outside of any competent evidence. This evidence is not offered merely as to the Lackawanna. It is offered as to all the

1517 other companies. While the reports may be competent evidence to show whether these roads are making or losing money, it is evident that they handle thousands of articles, and whether they make or lose money on a given one is the vital thing—whether they make or lose money on their coal business is the vital thing. This does not show anything on that. It may be that we can not get at the actual cost of transporting coal, but we may get at some approximation. We can figure out what it costs to build a railroad, what it costs to build a colliery, what it costs to build coal cars, what it costs for switching, and what it costs for many other things—in order to load and unload, and all that. I suppose those items are all proper items to get at the question in an approximate way. Here I represent some coal companies and a railroad company, the coal companies not being parties and the railroad company being a party. How can it be competent to go into the surplus of the Lackawanna Road? On what theory can it be competent to go into that as bearing on what is a reasonable rate for the Erie to charge. If that be a correct theory, how many weeks shall we spend going through

the three different foreclosures of the Erie, why they took place,

1518 and all that—why it is they can not pay dividends and have not for years and years. It seems to me that all that is so remote that it can not be said to have any legitimate bearing on the issues before this Commission at all.

The CHAIRMAN. That may all be, but the report of this company is in evidence. The report will show a surplus and the witness' attention is called to that item, I suppose, with a view of asking him some question about it. We better see what the question is.

Mr. MOOT. To raise the question, to get the question where I put it the other day, whether these railroad companies are to be bound by incompetent or irrelevant evidence or whether they are to have their cases tried just like any citizen complaining of some charge made against

him, I move on behalf of the Erie Railroad Company to strike from the record this report, on the ground that it is not competent, relevant, or proper on the issues before you.

Mr. BUDD. We object on the ground that where evidence has been permitted to go into the record without objection it can not be stricken out. That is a well-known rule of law. It may not be in this State with the railroad companies, but it is in all other States. You
1519 must object before you can move to strike out.

Mr. ROSS. If the court please, this report may be competent as to those portions that relate to transportation, but, as has been testified by the witness, our company, under its charter, has the right to own and operate coal mines. It has been owning and operating coal mines for seventy years. Whether or not it is making a profit out of that branch of the business, I submit, is absolutely immaterial to any issue here. The material question is as to the reasonableness of the rate, and whether there is any pooling arrangement for the division of freight or the receipts from the freight. That question, I shall request witness to decline to answer for the same reasons we have heretofore submitted before this Commission.

The CHAIRMAN. We think the objection should be overruled. We had supposed in investigating the reasonableness of a rate that it was competent to show the financial condition of the company.

Mr. SHEARN. It seemed to be thought so yesterday.

Mr. CARR. Will the Commission pardon this suggestion in reference to it: If a company has a surplus that has been accumulated within a series of years, that is one thing; but if a company has engaged in
1520 other business and that has proven profitable and a surplus has been accumulated, and in a report which shows not only the mining operations, but the transportation operations, it appears that there is a surplus, larger or small, in what way can it be determined what part came from the transportation operations and what from the mining operations. If you can not separate it, then it is immaterial.

Mr. BUDD. How do you know we can not separate it? You must get it in first and then examine as to the source.

The CHAIRMAN. We think the testimony is competent. Will you repeat your question, Mr. Shearn?

Mr. SHEARN. I will read to the Commission such parts of this report as I deem important now, which perhaps will answer some objections made. The report shows that during the year ending December 31, 1901, the total tons gross of coal transported were 7,308,057 tons; that the average distance that coal was carried was 163 miles; that the average rate earned per ton was $1.45, which was an increase of two cents over the year before; that the average rate per ton per mile on this traffic was 8.9 mills; that the average rate earned per ton on merchandise traffic, which is separated from the coal traffic, is $1.02 a ton, the average haul being 149 miles; that the average rate per ton per mile on merchandise traffic is 6.8 mills, as compared with 8.9 mills on
1521 anthracite coal; that the total coal sales of this railroad company for the year 1901 were 7,334,255 tons; that the total amount received for this coal was $26,200,008.11; that the number of tons of coal mined and purchased during the same year was 7,517,416 tons,

being about 180,000 tons more mined and purchased than there were sold; that the cost of mining and purchasing those 7,517,000 tons was $11,288,070.91; that the cost of transportation on the D., L. & W. lines of 6,123,978 tons was $10,656,340.40, and on lines beyond, $1,618,159.54, making a total cost of transportation on the D., L. & W. and lines beyond of $12,274,499.94; that the cost of handling local and foreign agencies for this number of tons, that is to say, 6,253,444, was $572,805.18. Now, Mr. Truesdale, what elements are included in those items of handling local and foreign agencies, for instance, the item of handling—handling where?

Mr. TRUESDALE. I do not know whether I can tell you all the items it would include. It would include such items as cost of loading boats, where the coal is passed over a trestle and loaded into boats.

Mr. SHEARN. At terminals?

1522 Mr. TRUESDALE. Yes, sir; at our western agencies where the coal leaves the boats and goes over the docks and at which it is handled; it covers the cost of taking out of the boats, handling at the docks, rescreening, and loading into the cars for shipment to the points where it is consumed.

Mr. SHEARN. Those items are not separated in this report from the expense of local and foreign agencies. Now, in that item of local agencies, is there included your New York agency?

Mr. TRUESDALE. I think that is included, but I will not be absolutely sure.

Mr. SHEARN. What are the foreign agencies—outside of the United States?

Mr. TRUESDALE. Oh, no; foreign to our road—elsewhere than points on our line of road.

Mr. SHEARN. Do you know what particular portion of this $572,000 goes to the expense of handling and what to the expense of local and foreign agencies?

Mr. TRUESDALE. I do not think I have gotten in my mind what you are after. I think the cost of handling at local and foreign agencies includes all the items I have indicated, whether on our line or points beyond.

1523 Mr. SHEARN. Does that mean cost of handling at local and foreign agencies?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. It does not mean cost of handling and local and foreign agencies?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. Then, that $572,000 is cost of handling?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Commissions were paid on 3,618,598 tons of coal, amounting to $746,553.13.

Mr. ROSS. I object to that as immaterial.

Mr. SHEARN. It is in. I am calling attention to what is already in.

Mr. ROSS. I move that it be stricken out.

The CHAIRMAN. The report is in.

Mr. ROSS. I move that all of that portion of the report be stricken out which relates to the mining or sale of coal. The only question before this Commission is the question as to the transportation.

Com'r PROUTY. How can you separate them?

Mr. ROSS. He is going into what it costs us to sell our coal. That inquiry is absolutely immaterial.

1524 Mr. SHEARN. I do not know when it became so. It has not been immaterial the last two weeks.

The CHAIRMAN. Counsel is now calling the attention of the Commission to certain facts and figures that appear already in the report received.

Mr. ROSS. And asking questions of the witness pertaining to it.

The CHAIRMAN. He has not yet, has he?

Mr. SHEARN. No, sir.

Mr. ROSS. Yes, sir. What was the question, Mr. Stenographer?

(The stenographer repeated the question as follows: "Commissions were paid on 3,618,598 tons of coal, amounting to $746,553.13.")

The CHAIRMAN. I do not mean to say that you are precluded from raising the question, Mr. Ross. Proceed, Mr. Shearn.

Mr. SHEARN. Who sells your coal on commission?

Mr. ROSS. I object, if the court please, on the ground that it is absolutely immaterial to this inquiry.

The CHAIRMAN. Your purpose being, I suppose, to raise the same question?

1525 Mr. ROSS. Not only that question, but the other question.

There is another question involved in this hearing pertaining to our road; that is, our company is differently situated from the others. We are operating under a charter that gives us the right to conduct a general coal business and also gives us the right to transport coal and other merchandise and persons and property. Now, it seems to me, that the jurisdiction of the Commission is limited to that portion of the business of the company that pertains to transportation, which is interstate. The jurisdiction of the Commission, in other words, does not extend to any business that it may take under its charter given it by the State of Pennsylvania.

Com'r PROUTY. Mr. Shearn claims that you discriminate against the individual operator on your line.

Mr. ROSS. I insist upon my objection and request the witness to decline to answer.

The CHAIRMAN. We think the witness should answer.

Mr. SHEARN. Will you please answer the question?

Mr. ROSS. I request the witness, as counsel for the company, not to answer.

1526 Mr. SHEARN. I ask the Commission to instruct the witness to answer.

The CHAIRMAN. Objection is made, and the objection is overruled. The witness is directed to answer the question, and on advice of counsel he declines.

Mr. SHEARN. Do you decline to answer, Mr. Truesdale?

Mr. TRUESDALE. On advice of my attorney, I do, sir.

Mr. SHEARN. Do you consider that twenty cents a ton commission that you have charged here against the cost and expense of mining is a fair and reasonable charge for commissions?

Mr. ROSS. The same objection.

The CHAIRMAN. Same ruling.

Mr. SHEARN. You maintain a sales department of your own at the city of New York, don't you?

Mr. ROSS. Same objection.

The CHAIRMAN. Do you object to the fact——

Mr. ROSS. I object to going into any portion of that business pertaining to the mining and selling of coal.

Mr. SHEARN. Do you refuse to answer the question?

Mr. TRUESDALE. I must decline.

1527 Mr. SHEARN. I ask the Commission to direct the witness to answer.

The CHAIRMAN. The witness is directed and required by the Commission to answer the question.

Mr. ROSS. Same ruling and same objection.

Mr. SHEARN. You have already testified that the Delaware, Lackawanna & Western Railroad Company was engaged in the business of mining and selling anthracite coal. Do you sell anthracite coal at tide water?

Mr. ROSS. Same objection.

Mr. SHEARN. You object?

The CHAIRMAN. The objection is overruled.

Mr. SHEARN. I ask the witness to answer the question.

Mr. ROSS. Same objection and same ruling.

The CHAIRMAN. The witness is directed to answer.

Mr. TRUESDALE. I decline, on advice of counsel, to do so.

Mr. SHEARN. I read from this same report that the total cost and expense to this railroad company for mining, purchasing, and selling coal—the number of tons I have already read in evidence—for the year ending

1528 December 31, 1901, including the items of cost of transportation, handling, and selling, and this item of $746,000 for commissions, and the item of $91,000 for general expenses, and the item of $184,765 for vessel expenses, and also charging up against it extraordinary improvements amounting to $321,853, was $26,370,104.16, which left a profit on the transaction, with those items included, on total sales of 7,334,255 tons, of $1,638,643.13.

Mr. ROSS. Same objection, and I again make the motion that that portion of the report pertaining to the mining and selling of coal be stricken out.

Mr. SHEARN. What elements or expenses are included in the item $91,321.65 for general expenses?

Mr. ROSS. I object, if the court please, for the same reason.

The CHAIRMAN. The court overrules.

Mr. ROSS. Same objection and same ruling.

The CHAIRMAN. The court directs the witness to answer, and the witness declines to do so, notwithstanding.

Com'r YEOMANS. All the coal you handle, mine, or purchase you transport to market, do you not, to tide water or somewhere—you transport it over your road?

Mr. TRUESDALE. All we do not consume.

1529 Com'r YEOMANS. And of course the rate is mixed up? You buy coal for a certain amount and take it to the seaboard and sell it for a certain figure, and out of that somewhere comes the rate, does it not?

Mr. TRUESDALE. The rate is in there, and one of the items Mr. Shearn read covers the transportation rates of the railroad company and are our tariff rates.

Com'r YEOMANS. You buy the coal and agree with this man to take his coal to tide water or elsewhere and sell it, don't you, and give him a certain amount? You transport the coal?

Mr. TRUESDALE. We do.

Com'r YEOMANS. And sell it for thirty-five or sixty-five per cent, or whatever has been testified.

Mr. TRUESDALE. Yes, sir.

Com'r YEOMANS. Then why is not the rate in all of this? It can not get to tide water without having a rate.

Mr. ROSS. None of the questions, as I understand, involve the rate.

Com'r YEOMANS. How can you find the rate unless you find what the cost——

1530 Mr. ROSS. The regular tariff rate is charged. That question has not been asked.

Com'r YEOMANS. It has not been answered, but probably will be before we get through with this investigation.

Mr. TRUESDALE. You will find in that report an item in the gross earnings of the railroad company of ten or eleven million dollars. That was the transportation earnings of the company—the amount credited to the transportation earnings of the company for transportation over its road wherever the coal went—of the coal the company mined and bought. The rates charged on that coal are the legal rates on coal, the same as it charges to every shipper. Again, in the statement Mr. Shearn quoted some figures which cover the operations of our coal department and some charged up against the cost of coal department operations that represented the item that is credited to the transportation end of it. Now, those two are distinct in that report.

Com'r PROUTY. That is, you keep your coal business separate from the transportation?

Mr. TRUESDALE. Yes, sir.

1531 Com'r PROUTY. On the theory that your coal should be transported at the tariff rate?

Mr. TRUESDALE. The tariff rate.

Com'r PROUTY. So that it is possible, looking into your accounts, to show what you made out of the mining of coal and what you made out of the transportation?

Mr. TRUESDALE. Those figures are quite distinct; yes, sir.

Mr. SHEARN. What objection have you to letting the Commission know about these figures?

Mr. TRUESDALE. I will refer you to Mr. Ross.

Mr. ROSS. I am not objecting to any question pertinent to the transportation of coal.

Com'r PROUTY. By going back through your reports for a series of years could you ascertain these same facts? Have you kept your accounts the same way?

Mr. TRUESDALE. Since my connection with the company, yes, sir; I suppose so.

Com'r PROUTY. So it is possible to determine whether this surplus is

Mr. TRUESDALE. I suppose so; I am not sure.

Com'r PROUTY. Generally speaking, which is the more profit-
1532 able to your road, the coal business or the transportation business—which has been for the last few years?

Mr. TRUESDALE. As I remember, the transportation is more profitable; but you must bear in mind this, that the largest part of the investment of our company is in the coal property.

Com'r PROUTY. Mr. Baer, of the Reading, testified that the low prices that obtained in the past were altogether too low and he could not mine coal satisfactorily at a reasonable profit on a less price than $5. The testimony we took this morning showed that the prices in 1898 at tide water were perhaps $3.75. Now, if your company is making money at $3.75, he would not need to charge $5 to mine coal in competition with your company. Did your company during the era of low prices make money mining coal?

Mr. TRUESDALE. Some years they did not make much, judging from the records.

Com'r PROUTY. Then this surplus, whatever it is, is a transportation surplus and not a coal surplus?

Mr. TRUESDALE. Well, I could not say that.

1533 Com'r FIFER. The greater portion of it is from the transportation, is it not?

Mr. TRUESDALE. I could not answer that question without considerable investigation.

Com'r PROUTY. You see, Mr. Truesdale, the position you have taken requires this investigation, because your results for a series of years all stand together, both the coal and the railroad operations, and unless we are allowed to look into your coal operations we can not tell whether the profits have accumulated from the transportation or the mining.

Mr. TRUESDALE. There are a good many questions that enter into that. It takes a good, careful, and exhaustive search of the whole situation. There were certain years in the history of the Lackawanna when it was paying seven per cent dividends, when it was not spending the money it ought to on the property. That, to some extent, is being made good to-day.

Com'r PROUTY. That is true of a good many companies.

Mr. TRUESDALE. Some of them suffered more perhaps than the Lackawanna did, but it is true as to the Lackawanna. It is a stronger
1534 company than some of the others, but it suffered with the others. If those conditions continued for a period of years long enough, it would have landed where some of the others did, in my opinion.

Com'r PROUTY. Mr. Baer testified yesterday that he thought the Reading ought to be satisfied with four per cent on its capitalization. You would not be content with that rule, would you?

Mr. TRUESDALE. No, sir; the stockholders of the Lackawanna road are entitled to more than that.

Mr. SHEARN. As far as the freight is concerned on your own coal—which is by far the larger part of the coal you transport—the freight charge is a mere matter of bookkeeping, is it not?

Mr. TRUESDALE. Well, I do not know exactly what you mean by that.

The CHAIRMAN. Mr. Truesdale does not know any more about that,

Mr. SHEARN. I should think he ought to.

Mr. SHEARN. Well, is it not obvious to you that it is a matter of bookkeeping, Mr. Truesdale?

Mr. TRUESDALE. As affecting what?

1535 Com'r PROUTY. If it is not a matter of bookkeeping, can you find out what it actually costs to transport that coal and distribute it——

Mr. ROSS. I understand that the coal department pays the transporting department the tariff rate.

Com'r PROUTY. He has testified to that. I ask if he does that because after investigation he is satisfied that that represents the cost of transportation. What do you say as to that?

Mr. TRUESDALE. I have not specially investigated as to whether that is so.

Mr. SHEARN. You do not know what the freight charge is based upon?

Mr. TRUESDALE. No; I can not say that I do. The rate has been established a good many years and has not been changed, and is a fair and reasonable rate for the service performed.

Mr. SHEARN. I am talking about the freight on your own coal—coal you produce yourself. Somewhere into these accounts goes a charge which is nominal—a charge against your coal department for the transportation of your own coal.

1536 The CHAIRMAN. He says that is the tariff rate.

Mr. SHEARN. Is that the tariff rate?

Mr. TRUESDALE. It is. I so stated.

Mr. SHEARN. As a matter of fact, what you actually get for transporting that coal is what there is left after you pay the cost of mining it and the actual cost of transporting it and the cost of selling it. Is not that so?

Mr. ROSS. If the court please, that brings in the same question—the cost of selling coal.

Com'r PROUTY. It involves the question of transportation. We have to have that question in.

The CHAIRMAN. Mr. Shearn, it seems to me that that follows from what he has already said.

Mr. SHEARN. Well, what is the objecting to answering?

The CHAIRMAN. What is there to answer?

Mr. SHEARN. Well, I should not ask it if I did not think it needed to be answered. If the Commission thinks it need not be answered, I will not press the question.

The CHAIRMAN. We do not see any reason why it should not be answered and we see no reason why you should ask it.

Mr. SHEARN. You mean because it is obvious that that is the case?

1537 The CHAIRMAN. It must be so.

Mr. SHEARN. I would like to see if the witness agrees with that and there is any other explanation. Do you agree to what I said?

Mr. TRUESDALE. I will have to have it restated.

Mr. ROSS. I objected to that portion of the question in reference to the matter of selling coal.

Mr. SHEARN. I will ask the stenographer to repeat the question.

(The question was repeated by the stenographer, as follows:

"As a matter of fact, what you actually get for transporting that coal is what there is left after you pay the cost of mining it and the actual cost of transporting it and the cost of selling it. Is not that so?")

The CHAIRMAN. It seems to me that that follows from what he has testified.

Mr. SHEARN. On the coal you purchase under these 65 per cent contracts, what is the rate of freight that the Delaware, Lackawanna & Western gets for transporting that coal to tide water?

1538 The CHAIRMAN. What is that question?

Mr. SHEARN. The coal purchased under the 65 per cent contracts, what rate of freight does the Delaware, Lackawanna & Western get for carrying that to tide water?

Mr. ROSS. I object. That involves the same question pertaining to those contracts.

Com'r YEOMANS. Do you object to telling the rate on anything that goes over your road? He asks what rate is collected. If you object to that, you will object to almost anything.

Mr. ROSS. I understood that that whole question was to go to the court.

Com'r PROUTY. There are cases where the independent company buys coal and the testimony is that they pay the full tariff rate. The question here is what does your company get for transporting that coal?

Mr. ROSS. Well, I do not know that there is any objection to stating what our company gets for transporting coal.

Mr. TRUESDALE. I think I already stated to the Commission that we charge tariff rates on all the coal we mine and purchase.

1539 Mr. SHEARN. That is, irrespective of whether you realize from the sales of coal at tide water enough to amount to the tariff rate?

Mr. ROSS. I object to that. That brings up the question of the sale of the coal.

Mr. SHEARN. He says he charges the tariff rate against all their coal, whether their own coal or purchased coal. I say, then, he charges the tariff rate against the purchased coal, irrespective of the fact whether the 35 per cent of the price at tide water amounts to the tariff rate or not.

The CHAIRMAN. That is what he says. On the basis of charging the tariff rate for the transportation of the coal they buy, they make or lose, according to whether the difference between what they buy and sell at exceeds or is less than the tariff rate. It is covered when he says they actually charge the tariff rate on what they mine and sell.

Com'r PROUTY. There was a time that you charged all independent operators on your line, not the actual tariff rate, but forty per cent of the price received at tide water. During that period did you charge

1540 the tariff rate on your own coal?

Mr. TRUESDALE. That must antedate my time.

Com'r PROUTY. Oh, it was not the Lackawanna; it was the Lehigh Valley. I am mistaken as to that.

Mr. SHEARN. Well, when coal is sold at tide water at $4 a ton, and you pay out 65 per cent of it to the private operator, you lose money on each transaction, do you not, if you charge up $1.55, or the full tariff rate, against the transportation of that coal?

Mr. Ross. I object. It involves the question of the sale of coal, and is not pertinent to this inquiry.

The CHAIRMAN. That evidently follows, Mr. Shearn.

Mr. SHEARN. I understand it follows, but I want to know if he agrees that it follows; and then I want his explanation of why they are willing to do business at a loss.

Mr. MOOT. You want to go into the purchase-and-sale business?

Mr. SHEARN. I certainly do, and expect to either now or later.

Mr. BUDD. We want to go into all the elements of this business.

1541 The CHAIRMAN. What is the question?

(The question was repeated by the stenographer, as follows: "Well, when coal is sold at tide water at $4 a ton and you pay out 65 per cent of it to the private operator, you lose money on each transaction, do you not, if you charge up $1.55, or the full tariff rate, against the transportation of that coal?")

Mr. Ross. Objected to on the ground that it involves the same question heretofore objected to, and for the same reasons.

The CHAIRMAN. It seems to me the same class of questions that have been asked, we have ruled should be answered.

Mr. SHEARN. Yes, sir. What ruling does the court make on the objection.

Mr. Ross. There is one distinction, and that is that none of the other companies had a charter to sell coal. The others were coal companies. This is a coal and carrying company.

The CHAIRMAN. It does not appear to us that that is a dis-

1542 tinction that strengthens your objection. The objection is overruled and the witness is directed to answer.

Mr. SHEARN. Will you answer?

Mr. TRUESDALE. I decline for the same reason as before.

Mr. SHEARN. What is the price of coal to-day sold by the D. L. & W. at tide water?

Mr. Ross. I object for the same reason. It is immaterial to this inquiry.

The CHAIRMAN. We think that is a proper question. We have been accustomed to take evidence of the value of an article, the transportation of which is under consideration, and I do not know of any evidence of vaoue than the market price.

Mr. Ross. I think the objection comes technically——

Com'r PROUTY. You can consult yourself, Mr. Truesdale, as the president of the transporting department of the Lackawana road, and answer that.

The CHAIRMAN. You may answer it.

Mr. TRUESDALE. Our price list on coal, prepared sizes—it varies according to size—egg, stove, and nut, is $5 f. o. b. boat to our own terminals. It is a net price of $4.60.

1543 Mr. SHEARN. What was it yesterday?

Mr. TRUESDALE. $4.50.

Mr. SHEARN. What has happened since yesterday to make the price $4.50 to-day?

Mr. Ross. I object.

Mr. SHEARN. I say, what has happened to make the advance? Has

there been any change that you know of in the supply of coal since yesterday?

Mr. Ross. I object. It is absolutely immaterial to the questions involved.

The Chairman. We overrule the objection.

Mr. Shearn. Do you decline to answer?

Mr. Truesdale. Yes, sir.

The Chairman. The objection is overruled, and the witness is required to answer, and, notwithstanding, he declines.

Mr. Shearn. Have you observed any change in the demand for coal since yesterday?

Mr. Ross. Same objection.

The Chairman. Same objection and same ruling.

Mr. Shearn. Has the cost of transporting coal gone up any since yesterday to this market.

1544 Mr. Truesdale. No, sir; I can not say that it has.

Mr. Shearn. Has the cost of producing coal gone up any since yesterday?

Mr. Ross. I object, because it is not material as to what the cost of producing coal is.

The Chairman. Objection overruled.

Mr. Ross. I request the witness to decline to answer.

The Chairman. The witness is instructed to answer, and declines to do so.

Mr. Shearn. Why do you decline, Mr. Truesdale?

Mr. Truesdale. Because I am so instructed by my attorney.

Mr. Shearn. What will the price of anthracite, prepared sizes, at tide water, be on the 1st of next month?

Mr. Ross. Same objection.

The Chairman. Ask him if he knows.

Mr. Shearn. Do you know what the price of anthracite coal, prepared sizes, at tidewater, will be on the 1st of next month?

Mr. Ross. Same objection, and for the same reasons.

The Chairman. Same ruling. Witness is instructed to answer, if he knows.

1545 Mr. Ross. Same objection.

Mr. Shearn. You refuse to state?

Mr. Truesdale. I decline, on advice of my attorney.

Mr. Shearn. And on no other grounds?

Mr. Truesdale. No other ground.

Mr. Shearn. Do you know what the price of anthracite coal, prepared sizes, at tide water, D. L. & W. coal, will be on the 1st day of July of this year?

Mr. Ross. I object to that question for the same reasons, and request the witness to decline to answer.

Mr. Shearn. Will the court instruct the witness to answer?

The Chairman. No, sir. It seems unnecessary for us to pursue these questions.

Mr. Shearn. I shall not ask for each month. I jumped to July. I am going to stop at July.

The CHAIRMAN. We are disposed not to require an answer to that question.

Mr. SHEARN. Who fixes the price of Delaware, Lackawanna & Western coal at tide water?

Mr. ROSS. I object on the ground that it is immaterial to the
1546 questions before this Commission, for the reasons before stated.

The CHAIRMAN. You may answer the question.

Mr. ROSS. I request the witness to decline to answer the question.

The CHAIRMAN. The witness is directed to answer.

Mr. ROSS. Same objection and same ruling.

Mr. SHEARN. What are you going to do, Mr. Truesdale?

Mr. TRUESDALE. I decline, on advice of counsel.

Mr. SHEARN. Did you have any consultation with Mr. Baer prior to fixing the price of Delaware, Lackawanna & Western coal at tide water for the 1st day of April, 1903?

Mr. ROSS. That is objectionable for the same reason. I am willing to permit the witness to answer that question if he desires to.

Mr. SHEARN. Is the witness going to answer?

The CHAIRMAN. We think he should.

Mr. ROSS. You may answer that question, Mr. Truesdale.

Mr. TRUESDALE. What is the question?

(The question was repeated by the stenographer, as follows:
1547 "Did you have any consultation with Mr. Baer prior to fixing the price of Delaware, Lackawanna & Western coal at tide water for the 1st day of April, 1903?")

Mr. TRUESDALE. I had a good many consultations, one way and another, with Mr. Baer before the price was fixed on coal.

Mr. SHEARN. Shall we take a recess now?

The CHAIRMAN. We will take a recess until two o'clock.

Mr. SHEARN. I would like to have the Commission request the witness to bring here after recess the reports of the Delaware, Lackawanna & Western for 1898, 1899, and 1900.

Mr. ROSS. I think I have them here now.

At one o'clock p. m., the Commission took a recess until two o'clock p. m.

1548 AFTER RECESS.

2 o'clock p. m.

Mr. SHEARN. I offer in evidence the annual report of the Delaware, Lackawanna & Western for the year 1900.

Mr. MOOT. I must object to it if it is offered with reference to other companies or for the companies for which I appear.

Com'r PROUTY. Suppose we should find that the Lackawanna's rate is too high and that yours was not. Would it be our duty to reduce the Lackawanna rate and let yours stand?

Mr. MOOT. I have no doubt. I raise the question so as to get it on the record.

Mr. ROSS. I have no objection to it so far as it pertains to transportation questions. So far as it pertains to mining and selling coal I do object to it. If it should go in at all it should go in in regard to that question and subject to the motion to strike out everything pertaining to the mining and selling of coal.

The CHAIRMAN. The report will be received subject to the objections.

Mr. MOOT. I wish to have a ruling as to whether it is received
1549 simply as to the Lackawanna or is received as to others as well. I want it to go on the record.

Mr. SHEARN. I offer the evidence in the first place as against all the defendant carriers. Here is the situation in a nutshell——

The CHAIRMAN. You need not discuss it, Mr. Shearn; we will receive it generally and determine later whether it is applicable or is to be considered as in evidence against the other companies or not.

Mr. ROSS. So the court will make no ruling at the present time on my motion?

The CHAIRMAN. You are entitled to reserve all your rights. We do not want to preclude you.

Mr. ROSS. Mr. Shearn, you have the reports for 1898, 1899, 1900, 1901, and 1902, which you are to put in.

Mr. SHEARN. Yes, sir; but I have not got to them.

Mr. ROSS. We make the same objection and take the same ruling of the court.

The CHAIRMAN. They will all be received subject to the same objection and under the same ruling.

(The report referred to, for 1900, is hereto attached and marked "Exhibit No. 29.")

Mr. SHEARN. I now offer the report of 1899.

1550 (Hereto attached and marked "Exhibit 30.")

Mr. SHEARN. I offer the report for 1902.

(Hereto attached and marked "Exhibit No. 31.")

The CHAIRMAN. These are the reports of the——

Mr. SHEARN. Of the Delaware, Lackawanna & Western Railroad Company.

The CHAIRMAN. To its own stockholders?

Mr. SHEARN. Yes, sir.

The CHAIRMAN. Are those for the calendar year or for the fiscal year ending June 30?

Mr. SHEARN. These are for the year ending December 31 in each year. I now offer the report for 1898. It is not here yet, but I ask to have it given an exhibit number.

(Hereto attached and marked "Exhibit No. 32.")

Mr. ROSS. You have the conditions under which these are offered, Mr. Stenographer?

(The stenographer replied in the affirmative.)

Mr. SHEARN. There are no conditions. The court received them. They are offered and received subject to objection. I read in evidence at this point from the report ending December 31, 1900, that the total sales for 1900 were 6,162,737 tons, the proceeds thereof being
1551 $21,211,456.07; that the number of tons mined and purchased amounted to 5,725,505, the cost of coal mined and purchased being $7,561,457.74. The number of tons transported by the company denominated as "local" was 3,061,192 tons, at a cost of $4,868,479.56; by vessel, 540,892 tons, at a cost of $144,536.24; denominated as xQ "foreign," but transported by this company, 1,816,209 tons, at an expense or cost of $3,681,055.16, and that the cost of transporting its

coal by others was $1,097,884.52 for 1,816,209 tons. The total cost of transportation of these 4,877,201 tons was $9,791,955.48.

Com'r PROUTY. Mr. Truesdale, what do you mean by local coal? Do you mean coal the transportation of which begins and ends on your line?

Mr. TRUESDALE. I think that is it, Mr. Prouty.

Mr. SHEARN (continuing). Charged up as additional expense against 4,891,815 tons for handling is $538,979.45; against 3,111,163 tons for commission, $573,055.47, and for general expenses, $131,781.13, or a total for charges other than transportation amounting to $1,243,823.05.

1552 The total cost and expense, with all those charges included, both transportation and others, was $21,061,804.73. The profit, with all those charges included, for the year being $1,200,082.20. Without going over those same figures in detail for 1899, I read in evidence from the report ending December 31, 1899, that charging up as elements of cost the handling, $718,512.63, and commissions, $519,728.94, and for renewals and improvements, $153,560.14, there was on the total sales for that year of 5,804,204 tons a profit of $904,172.64.

Com'r PROUTY. What year is that?

Mr. SHEARN. The year ending December 31, 1899.

Mr. ROSS. It is understood, is it, that this is all subject to the objections that have been made?

The CHAIRMAN. We so understand it, Mr. Ross.

Mr. SHEARN. I now read in evidence from the report ending December 31, 1902——

The CHAIRMAN. Why do you need to take up time with that?

Mr. SHEARN. This is the last one. I wanted to have those figures in showing the commissions charged and the profits on operation.

1553 The CHAIRMAN. You are aware, of course, that the question as to whether that evidence is admissible is yet to be determined?

Mr. SHEARN. I don't think so. You have received it and have received it because you think it is proper. There is nothing to be determined about it, because I do not want to offer a mass of statistics here and reports and not have the Commission know what I am offerring. I am offering it for the purpose of making some impression on your minds as I go along. For the year ending December 31, 1902, during which year the number of tons sold was 5,347,384, against which were charges for transportation amounting to $8,484,437, and also a charge of $424,610.96 for commissions, there was a profit on the year's business amounting to $792,466.

The CHAIRMAN. What year?

Mr. SHEARN. Ending December 31, 1902.

Com'r PROUTY. Does it appear from these reports whether anything is charged up by way of royalties, or whether the companies own their own land?

1554 Mr. SHEARN. There are no royalties stated in this report at all. Do you operate any mines under royalties?

Mr. TRUESDALE. Yes, sir; a good many of them. That is, coal we take from a good many of our mines is paid for on a royalty basis.

Com'r PROUTY. So the royalty is included in the expense?

Mr. TRUESDALE. Included in the expense.

Com'r PROUTY. Have you any coal lands of your own?

Mr. TRUESDALE. Yes, sir.

The CHAIRMAN. When you mine coal do you reckon in the royalty?

Mr. TRUESDALE. I could not answer that question without looking it up.

The CHAIRMAN. Do you make any allowance or charge up anything against the depreciation of the capital through the exhaustion of the mines?

Mr. TRUESDALE. I do not believe we do, sir.

Mr. SHEARN. These reports showing the operations of your coal department and showing the cost and expense include all the elements of cost and expense, do they not?

Mr. TRUESDALE. Yes, sir; they do.

1555 Mr. SHEARN. Here is the 1898 report. It has been given a number, which is Exhibit No. 31. You will observe that this report is simply a statement of the financial condition of the company as of December 31, 1898, and does not show the elements that I have been reading from. It does not show the cost of operating the coal department, but it does show that the surplus account on December 31, 1898, amounted to $14,804,240.90.

Com'r PROUTY. Now, Mr. Truesdale, in what form is the surplus of the Lackawanna road? Have you got amount of assets or charge it up and carry it as surplus?

Mr. TRUESDALE. To a considerable extent it owns stocks and bonds of other companies representing the surplus.

Mr. SHEARN. As you invest your surplus?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Since you became president, Mr. Truesdale, has it not been your practice to issue to the trade on the first day of each month a circular stating the price at which your company's coal will be sold for at tidewater?

1556 Mr. ROSS. That is objected to for the same reasons stated.

The CHAIRMAN. Mr. Shearn, we think you ought not to spend time in duplicating those questions.

Mr. SHEARN. All right, sir. Is this the price circular of the Delaware, Lackawanna & Western R. R. Co. in force and issued on April 1st, 1902?

Mr. ROSS. The same objection.

Mr. TRUESDALE. I do not think I answered the other question.

Mr. SHEARN. No; the court said it was not necessary.

Mr. TREUSDALE (after examining circular). That is the printed part of it. The notations on there I do not know anything about.

Mr. SHEARN. The memorandum on there is not part of the circular as issued?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. I offer it in evidence.

Mr. ROSS. The same objection.

The CHAIRMAN. It will be received subject to objections of counsel as made.

(Hereto attached and marked "Exhibit 33.")

1557 Mr. SHEARN. I would like to have that other question answered. It covers every month and every day of the month.

Mr. TRUESDALE. This a circular issued April 1st, 1902. A similar one is issued on the first of each month or whenever there is a change made in the amount of discount made from the circular. We do not always every month in the year.

Mr. SHEARN. That is, since April 1st, 1902, it has been the custom of the Delaware, Lackawanna & Western R. R. Co. to issue a price circular such as this to the trade on the first day of each month when there has been any change in prices?

Mr. TRUESDALE. Yes, sir; if such change occurred on the first day of the month and prior thereto, we have done so.

Mr. SHEARN. Have they not all been issued on the first day of each month?

Mr. TRUESDALE. Always?

Mr. SHEARN. Yes, sir; that is, since April 1st, 1901.

Mr. TRUESDALE. I can not say as to that. I think there was a change made last fall after the strike was over that was made on a different day.

1558 Mr. SHEARN. Eliminating the time of the strike, were not those circulars issued on the first day of the month during the months of April, May, June, July, and August, 1901?

Mr. TRUESDALE. I think they were, and——

Mr. SHEARN. And then again on the first of April, 1902?

Mr. TRUESDALE. I think they were excepting after the strike, in May, 1902, no subsequent circulars were issued until after the strike was over.

Mr. SHEARN. Who gives the instructions in your company, as to what prices shall be stated in these circulars?

Mr. TRUESDALE. They are given by me, or on my approval.

Mr. SHEARN. That is to say, you fix the price on it?

Mr. TRUESDALE. I virtually; yes, sir.

Mr. SHEARN. Now, at adjournment at recess, I just asked you, whether before these prices are fixed, or before they were fixed for the first day of April, 1901, you had any consultation with Mr. Baer or Mr. Thomas?

Mr. TRUESDALE. I have no present recollection on that matter,

1559 Mr. Shearn. I have had frequent conferences with those gentlemen, at different times, since my connection with the Lackawanna road.

Mr. SHEARN. You have had frequent conferences with them since January 1st, 1901?

Mr. TRUESDALE. Yes, and prior thereto.

Mr. SHEARN. Well, Mr. Baer was not president of the Reading Company prior to that time. Did you confer with him prior to that time?

Mr. TRUESDALE. I have known Mr. Baer and met him a good many times prior to that. I have no such conferences in mind, where he might or might not have been present——

Mr. SHEARN. But the conferences which you may have held with Mr. Baer or Mr. Thomas, have had to do with the coal business, have they not?

Mr. TRUESDALE. Matters pertaining to coal business are very often discussed between us when we meet. That is very natural.

Mr. SHEARN. Those matters have to do in part with the price of anthracite coal at tide water, don't they?

Mr. TRUESDALE. We discuss those matters generally; yes, sir.

1560 Mr. SHEARN. And also with the output of the collieries of the respective companies?

Mr. TRUESDALE. We have at times discussed that question, too.

Mr. SHEARN. It has appeared here in evidence that the Reading Coal & Iron Company has, during this same period issued to the trade from month to month, getting them into the hands of the trade on the first day of the month, price circulars, stating the price at which their coal would be sold, and it appears that the prices are the same. Have you known at the time you have issued these various price circulars of yours on the first day of the month, as you have testified, what the price was that the Reading was going to put in its price circular that came out on the same day was to be?

Mr. TRUESDALE. We have had general knowledge of about what they were going to make the prices, or what they were going to be made.

Mr. SHEARN. And you have obtained that knowledge from conferences or interviews with Mr. Baer?

Mr. TRUESDALE. No, sir.

1561 Mr. SHEARN. From what source?

Mr. TRUESDALE. They usually distribute their circulars. They are distributed not only among their customers but among people who are engaged in the same coal.

Mr. SHEARN. Their circulars bear date on the day preceding the date of your circular. You have been in the habit of getting these circulars of yours out on the day on which they are dated, haven't you?

Mr. TRUESDALE. That I don't know. I do not know there is any date fixed at all. I do not believe so; that is with reference to the circulars of any other company.

Mr. SHEARN. You have always known prior to issuing the circular what price was to be charged by the Reading Coal & Iron Company?

Mr. TRUESDALE. We have had general knowledge on that point; yes, sir.

Mr. SHEARN. And you have informed the Reading Coal & Iron Company what you intended to charge for your coal?

Mr. TRUESDALE. I believe we exchanged circulars or our price lists.

1562 Mr. SHEARN. Before the circulars come out don't you inform the Reading Coal & Iron Company?

Mr. TRUESDALE. Not formally; no, sir.

Mr. SHEARN. But don't you communicate with them what you intend to charge for your coal for the ensuing month?

Mr. TRUESDALE. I do not know that there is any definite information conveyed to them to that effect or not. There may be or may not be. There is no arrangement to that effect, however. There is no agreement, there is no arrangement, there is no promise existing between one or the other of us that we shall do that.

Mr. SHEARN. No promise that imposes any liability upon you for failing to carry it out.

Mr. TRUESDALE. No liability rests upon us or any other company engaged in the anthracite business, so far as I know, to do that.

Mr. SHEARN. Or before the circulars are issued, before the prices are fixed, it has been your custom to confer with one another and inform one another what prices you intended to charge for your coal for the ensuing month?

1563 Mr. TRUESDALE. I do not think that it is a fair statement of the facts in the case, Mr. Shearn, to say that we do that regularly.

Mr. SHEARN. I do not mean every month necessarily, but now then on or before the first of April in 1901 you have decided, have you not, what you intended to charge for your coal for the ensuing five months?

Mr. TRUESDALE. Have announced, you say?

Mr. SHEARN. You have decided.

Mr. TRUESDALE. Well, we have done that in the last two or three years, but that is subject to change.

Mr. ROSS. I object to those questions; they are all irrelevent. Besides counsel wont permit him to complete his answers.

Mr. SHEARN. Let him complete it.

(The question and answer were read by the stenographer.)

Mr. SHEARN. Is there anything to be added to that, Mr. Truesdale?

Mr. TRUESDALE. Nothing that occurs to me at present.

Mr. SHEARN. Is there anything you would like to add to it, Mr. Ross?

1564 Mr. ROSS. I thought it appeared that he was interrupted in making his answer. That was all.

Mr. SHEARN. Now, then, you have, as I understand it, been in the habit of conferring with Mr. Baer and with Mr. Thomas relative to the prices that shall be charged for anthracite coal by your companies prior to the announcement of the April circular in each year since 1891, including 1891?

Mr. ROSS. I object to counsel trying to put words into the mouth of the witness which he did not use. I am perfectly willing that he shall ask him any of these questions, although they are not relevant or material on this subject. I object to the counsel putting words into the mouth of the witness which are not facts.

Mr. SHEARN. I do not think the witness will make any statements which are not facts. He has not shown that disposition at all.

The CHAIRMAN. What is the precise question?

Mr. SHEARN. I will ask the stenographer to repeat it.

(The question was repeated by the stenographer, as follows:

1565 "Now, then, you have, as I understand it, been in the habit of conferring with Mr. Baer and with Mr. Thomas relative to the prices that shall be charged for anthracite coal by your companies prior to the announcement of the April circular in each year since 1891, including 1891?")

Mr. TRUESDALE. I do not think I have stated that. I do not think we have been in the habit and I do not think I have been in the habit of doing it. I do not think I stated that I had been in the habit of conferring with them as to fixing prices.

Mr. SHEARN. Is it not a fact, Mr. Truesdale, that either in the month of January, or February, or March, of 1901 you had a conference with

Mr. Baer or with Mr. Thomas relative to what you intended to charge for anthracite coal at tide water during the five months beginning April 1st, 1901?

Mr. TRUESDALE. I have no recollection of any particular conference during that period. I have no doubt some were held during that time—not with specific reference to refixing prices, but at which no doubt the general question of prices and the anthracite industry and its prospects were discussed. Let me explain in regard to these price lists.

1566 The price lists that the coal companies issue from time to time do not necessarily indicate the prices they charge for the coal. A price list that a coal company may issue or has issued very often may be a price list just as with a glass manufacturer, it may be issued with certain discounts, and the glass manufacturer may cap his published list of discounts by an additional discount. Now, the mere fact that price lists are all the same do not indicate that the prices are maintained alike, and even since my connection with the anthracite coal interests and industry I have known cases where prices were very badly demoralized really, when the price lists of all these companies were exactly the same.

Mr. SHEARN. During the strike, for instance?

Mr. TRUESDALE. No; at other times.

Mr. SHEARN. I have not asked you or your sales agent whether he adhered to your circular prices during the period mentioned, but I have asked the sales agent of the Central Railroad of New Jersey and of the Reading Coal & Iron Company, and they have testified that during the period mentioned they have adhered to the price circulars. What I want to know from you now is whether you, prior to the issuing of your price circular of April 1st, 1901, had any conference with Mr. Baer or

1567 Mr. Thomas on the subject of what the price of anthracite coal should be in the next five months, and while I understand you to say that while you do not recall any definite conference you did confer with them?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. That while you do not recollect any specific conference, your recollection of your course of business would lead you to think that you did confer with them prior to deciding upon the prices of coal?

Mr. TRUESDALE. Do you mean to infer from what I have said that we fixed prices? Because I want to disclaim that, for that was not so.

Mr. SHEARN. You are entitled to disclaim any inference. I am asking for the fact.

Mr. TRUESDALE. I have replied to your enquiry just as fully and as accurately as it is possible for me to do.

Mr. SHEARN. That is to say, from your knowledge of the business and from your method of doing the business—of carrying it on—

1568 you have no doubt you did confer with them prior to the issuing the circular of April 1st, 1901?

Mr. ROSS. I object. Counsel is resorting to a habit that is objectionable. He is trying to put words into the mouth of the witness, which is absolutely unfair. The witness will answer them fairly, and it makes no difference what his inferences are. That is a matter for argument.

Mr. SHEARN. I am not asking for any inference, but for facts.

The CHAIRMAN. You have asked for the fact and he has answered you twice.

Mr. SHEARN. The witness stated that he could not recollect any specific conference, but had no doubt conferences were held. I want to make it more certain and find out what is the source of his information or belief on the subject, and as I understand it, his grounds of belief would be his course of business.

Com'r PROUTY. Your question rather indicates that Mr. Truesdale said that. He said some conference was had, but not specifically about the prices to be charged.

Com'r YEOMANS. He said it had no control over the price or relation to fixing the price.

1569 Mr. SHEARN. Let us have no doubt about it. Is it a fact that in January, or February, or March, 1901, you had any conference with Mr. Baer and Mr. Thomas on the subject of the price that was to be charged at tide water during the ensuing five months?

Mr. ROSS. I object, for the same reasons which have been heretofore stated to the Commission, and I request the witness to refuse to answer.

The CHAIRMAN. He has answered, it seems to us, a question in exactly that form. The question is a proper one, we think.

Com'r PROUTY. He asks now whether the question of price alone, I understand, was the subject of any conference to fix the price?

Mr. TRUESDALE. I have no recollection and I do not believe any conference was held for the specific purpose of discussing or fixing in any shape or form or manner the prices on anthracite coal after April 1st, 1901. Does that cover it?

Mr. SHEARN. No, sir; it does not cover it.

Mr. TRUESDALE. I have said, and repeat, that naturally gentlemen who are engaged in and have charge of industries of the impor-

1570 tance that the anthracite coal industry is, when they meet as we meet, very often informally, discuss the general conditions surrounding their business.

Mr. SHEARN. Of course, you don't have any chairman or elect any secretary.

Mr. TRUESDALE. During the month of March, 1901, I can say that there were none held that I attended then, because I was in Mexico all that month. I presume during the previous two months the gentlemen you speak of being in this city often, or living here, that very often I did meet them and did discuss, as we always did and as we naturally would, some phases of the anthracite business. They did not—the discussion as the result thereof—did not tend to or in fact fix the price charged by our company, or, so far as I know, of any other company on anthracite coal.

Mr. SHEARN. What I am interested in is whether you did at this meeting discuss the price at which coal was to be sold by the companys during the ensuing season?

Mr. ROSS. I object, because the witness has already answered, and, second, because it is immaterial to this enquiry, and I request the witness to refuse to answer.

1571 The CHAIRMAN. We have understood the witness to answer that question.

Mr. SHEARN. Commissioner Yeomans did not seem to understand it as I did.

Com'r YEOMANS. I understood him about three times.

Mr. SHEARN. What else did you discuss at the meetings other than the question of price?

Mr. ROSS. That is absolutely unfair.

Mr. SHEARN. Did you have any discussion as to the output of the collieries of the respective companies?

Mr. TRUESDALE. I do not remember any for a great length of time on that subject.

Mr. SHEARN. Did you have any discussion as to the amount of coal which should be carried by the respective companies?

Mr. TRUESDALE. I have no recollection of any recent discussion on that subject.

Mr. SHEARN. Then the only thing discussed at these meetings was the question of price?

Mr. ROSS. I object to that. That is absolutely unfair.

Mr. SHEARN. What else was discussed relative to the business
1572 you were engaged in, as to the business of mining, selling, and transporting coal other than the question of price?

Mr. TRUESDALE. During all that period one very important subject for discussion and consideration was the relation we bore to our mining labor. That has been a very burning question, as you must know, in the last two years.

Mr. SHEARN. Was that so in January or February, 1901?

Mr. TRUESDALE. Give me an opportunity to answer, please. There has been another question frequently discussed, and very properly as we have always thought, and that was the question of the sizes of coal. We have tried at various times and in various ways to reduce the number of sizes that are made, believing that it would be for the benefit of the trade generally, and ultimately of the public if the number of sizes of anthracite coal that are made and marketed might be reduced.

Mr. SHEARN. Did they discuss the amount of tonnage of each size that should be brought to tide water?

Mr. TRUESDALE. That has had nothing to do with it at all. It
1573 was a question of whether any one size of those made should be eliminated, or two sizes put together and made one.

Mr. SHEARN. What conclusion did you come to?

Mr. TRUESDALE. We have never been able to agree on anything.

Mr. SHEARN. You were able to agree on the price?

Mr. TRUESDALE. No, sir; we didn't discuss it; we didn't undertake to agree.

Mr. SHEARN. But you succeeded in agreeing, didn't you?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. Don't you know that the price circulars are identical?

Mr. TRUESDALE. I do.

Mr. ROSS. I object.

The CHAIRMAN. He has already told us about that.

Mr. SHEARN. How do you account for the fact that the circulars are uniform if there is no agreement?

Mr. ROSS. I object, for the reason, first, that he has been all over that, and for the further reason that it is absolutely immaterial to this enquiry.

I think the Commission should take into consideration the fact
1574 that we have been here now nearly two weeks in this proceeding, and the complainant has not even appeared here.

The CHAIRMAN. Yes.

Mr. SHEARN. It seems to me it is a reversal of the rulings heretofore made. It has been stated over and over again that it was of vital importance to the Commission to find out whether these were competitive rates and competitive prices. This goes right straight to that issue. It don't make any difference whether we have been here two weeks or not. This inquiry is going to be thorough.

Com'r PROUTY. Of course, Mr. Ross, with the objections when he declined to answer—and he would have a right to decline to answer now if he wants to—but I had in mind asking that same question, whether it must not follow from the fact that here are two price circulars which I understand are exactly alike, or they are alike to this extent, that they both show the prices will be increased ten cents a month, and it is hardly probable that Mr. Truesdale could have sat down in his office, and Mr. Baer in his office, and without any possible communication drawn up circulars alike, and I should like Mr. Truesdale,
1575 although he is not under any obligation to answer, how it happened that he fixed on just that form of circular, whether he knew before he published his circular what the circular of Mr. Baer was to be, if he saw Mr. Baer's circular first, or copied it, or whether he might have made some announcement to Mr. Baer, and Mr. Baer adopted his announcement; but there must be some reason why these two circulars are exactly alike. Now, the witness declined to answer those questions this morning and he has the same right to decline to answer them now, but if he submits to any examination on this subject that would seem to be a proper enquiry.

Mr. Ross. I have no objection to the Commission asking any questions that are relevent to the issues before it, but I think the issues ought to be limited to the questions raised by the complaint, which are, first, that the rates are unreasonable; second, that we are discriminating, and third, that we are in a pool. Those are the only questions.

Mr. CAMPBELL. There is no allegation about a pool here, except by inference from facts that do not warrant it, as intimated by the court.
1576 Mr. SHEARN. I do not understand there has been any intimation from the court as to what the decision is going to be.

Mr. CAMPBELL. I can point to the place when the intimation came into the record, when the question of the admissability of the Temple Iron Company papers was under consideration, and his honor, the chairman, announced that he did not see the pertinency of the papers with relation to the questions in the case before them, but on the statement that you would show grounds for it he allowed them to be received for the moment. There is all there is to any pooling or any violation of the fifth section.

Mr. SHEARN. I do not try to speak for the Commission.

Mr. CAMPBELL. And I do not, but as to what appears of record in this hearing.

Mr. SHEARN. What was stated very distinctly at the time those contracts were offered was that a basis had not been made for them, and I

stated that they were offered out of order in order to accommodate the convenience of counsel and put them in, but since that time Mr. Baer's testimony has shown very conclusively that they were relevent
1577 to the enquiry.

The CHAIRMAN. It is not worth while spending time about discussing it.

Mr. SHEARN. There is a question pending before the question for determination.

The CHAIRMAN. It is a question that has been allowed before, and if the witness under the advice of counsel or otherwise declines to answer, he can do so. The question is allowed.

Mr. ROSS. As I said before, I have no objections to the Commission asking any question they desire, but I do object to counsel asking the question because I contend it is irrelevent.

The CHAIRMAN. It does not make much difference whether it is asked by Mr. Shearn or by the Commission.

Com'r PROUTY. It is a question, Mr. Ross, that will probably have to be answered some time, but if he don't want to answer it now all right.

Mr. MOOT. If the Commission please, I don't want it to go undisputed in the record here on the part of others of us that because the price fixed on coal in this city or generally happened to have that same
1578 characteristic that it follows there has been a combination, because you find the same thing with reference to sugar or corn, or with reference to any great commodity marketed in this market.

The CHAIRMAN. We have not intimated that. We are very far from holding any such proposition. The question is now whether we will admit the question, not whether the testimony proves anything of the kind.

Mr. MOOT. I understood the suggestion to be that if these prices were alike that it was indication of that. I want to make a strong objection to that proposition.

Com'r PROUTY. We have had a good deal of testimony in reference to fixing these rates at different places—for instance, in the South—and the testimony has showed something of this sort: The railroad men get together and discuss a certain rate, and one says finally, we think the rate should be so and so, and another says it should be so and so, and each man expresses an independent opinion about it; but it happens that they publish the same rate, although they insist that there is no agreement.

Mr. MOOT. Your reports from beginning to end go on the basis that there must be classification and classification must go on a uniform
1579 rating, and to say that these men are doing something unlawful when they are doing what you yourselves require is something I can not understand.

The CHAIRMAN. We merely hold that the circumstances and conditions under which a rate is put in and maintained may have a possible bearing upon the reasonableness of that rate. So we allow this class of testimony. It does not follow, however, because we have admitted it that we find or believe that there is a combination, or that the rates have

been put in by an agreement. We hold that the testimony is competent, but the question of what it establishes is another thing.

Mr. Ross. It seems to me that you must arrive at a place where this class of questions must end. We have been at it two weeks already, and there has not been any question as to the manner of transportation.

The CHAIRMAN. We will get along faster if we hear Mr. Truesdale answer this particular question, or decline to do so, than by discussing the question.

Mr. Ross. Let Commissioner Prouty put the question.

The CHAIRMAN. It is the same question.

1580 Mr. Ross. I object to the question if it comes from counsel for complainant.

Mr. SHEARN. I insist on asking the question.

The CHAIRMAN. Ask him again, or have the old one read; whichever can be done quickest is best now.

Mr. SHEARN. I'll ask the stenographer to repeat the question.

(The question was repeated by the stenographer as follows:

"How do you account for the fact that the circulars are uniform if there is no agreement?")

Mr. Ross. I object to that for all the reasons heretofore stated, and request the witness to decline to answer.

The CHAIRMAN. The objection is overruled.

Mr. Ross. The same objection.

The CHAIRMAN. The witness is directed to answer the question.

Mr. Ross. The same objection.

The CHAIRMAN. If he has any explanation to give of the fact he may give it unless he declines to answer the question.

Mr. Ross. I request the witness to decline to answer the question.

1581 Mr. SHEARN. Do you decline to answer?

Mr. TRUESDALE. At the special request of my attorney, I shall do so.

Mr. SHEARN. And for no other reason?

Mr. TRUESDALE. And for no other reason.

Mr. SHEARN. Do you claim that it is a mere coincidence that the prices——

Mr. Ross. I object. That is the same question.

Mr. TRUESDALE. Let me answer that. I will answer it. I think it is fair to say that, so far as I know or have ever heard, the price circulars of the anthracite company have always been the same, without any agreement or without any understanding. There has been knowledge passed from one to another of what they were going to be, and they have issued them, but they have not necessarily governed the price.

Mr. SHEARN. That answers the question. Thank you.

Mr. TRUESDALE. I want to elaborate here the whole subject. You asked me awhile ago as to other matters discussed at the meetings informally or otherwise at which other presidents of the anthracite roads

1582 might have been present with myself. There have been other questions. One very important one discussed at different times was the general policy that should be pursued in the marketing of anthracite coal. There are a great many people unfamiliar with it and they have very crude and erroneous notions as to the whole business. It is an industry that is different from almost any other that I know of. One

of the chief difficulties and embarrassments that surround it—the proper, prompt, and economical handling of the business—has been in past years due to the fact that so large a percentage of the coal is for domestic use—from two-thirds to three-fourths of it I think is for domestic use. Then, its consumption is confined to four or five months of the year. When I first became familiar with the business that fact tended, with the adjustment of prices, tended to crowd the handling of the business into a very few months of the year. It was not an economical way to handle the business. I think as the result of that, commencing with 1901, the beginning of April, each of the companies by themselves fixed a spring price fifty cents a ton below what obtained during the winter.

1583 They each in their own way, and individually, advanced the price on their circulars ten cents a ton, but the discount which they put on the circular was reduced by ten cents a ton up to September when the full price list was obtainable. The purpose of that was to induce the small dealer, if you may say, to come in and buy his coal early, and, in their turn, the consumers to take it from his hands and get it into their hands. The idea of advancing the price ten cents a ton was so that the marketing of it could be carried on from month to month without any violent jump or fluctuation in the price. That policy was carried on through that year, and I think with great success to everyone. We were enabled to run our mines more regularly. Before that through three or four months of the spring or summer the mines were run on less than half time, and as soon as cold weather came everybody wanted their coal at once and the whole operation was crowded to the limit; and this was a very uneconomical way of operating the business. The price fixed on our price lists as we distribute them, since my connection with the business, fixed the actual price which may have been maintained since the strike of 1900 to tide. There is not one company I believe but

1584 what has been able during all that period to sell more coal than they were able to produce and put on the market at the full prices of their circulars. But there is no inducement for anyone to cut the price, because they could sell at the full price. But that those prices were maintained by any agreement or understanding, expressed or implied, has not been a fact, and I believe that whenever normal conditions shall obtain again and more normal stocks shall be in the hands of dealers and the public generally, we will have the same——

1585 Commissioner PROUTY. The same demoralization?

Mr. TRUESDALE. The same difference in prices as existed prior thereto. There is nothing different now that I see under those conditions. Of course, the situation since the strike of 1900—the general business activity, the great growth of the country, particularly the industrial activity, has of itself made a larger and more acute demand for everything—anthracite with others—and that has tended to maintain the prices. I know from my own knowledge that these circular prices have not even during that period been maintained.

Mr. ROSS. There have been frequently losses by strikes during that time, have there not?

Mr. TRUESDALE. Yes, sir; they have had an important influence in depleting the stocks of coal throughout the country, and it will be some time before normal conditions in that respect will be attained.

Mr. SHEARN. In other words, as I understand it, when normal conditions ensue, you look forward to competition between these companies in the sale of coal?

Mr. TRUESDALE. There is competition to-day, sir.

1586 Mr. SHEARN. There is?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. You look forward to a keener competition when normal conditions prevail once more, do you not?

Mr. TRUESDALE. Why, naturally when there is a short supply of the article, there is not the same competition to dispose of it as there is when there is a surplus.

Mr. SHEARN. Then, you do look forward to keener competition than at present?

Mr. TRUESDALE. Whenever normal conditions obtain and the stocks of coal get to where they have been in years past and there are no interruptions in mining, that will naturally follow.

Mr. SHEARN. I read from your annual report of 1901 as follows:

"The marketing of anthracite coal during the past year by the different large interests owning a large percentage of this coal deposit, has been conducted with exceptional good judgment and in the most harmonious spirit. To this is due the excellent results obtained during the year in the handling of this great and growing industry. The

1587 present outlook is favorable to an indefinite continuance of these favorable conditions."

Mr. TRUESDALE. That is so to-day, and was so when that was written.

Q. What did you mean by the statement in your report that the business had been conducted in the most harmonious spirit? Were you referring to the absence of competition between them?

Mr. TRUESDALE. There was not the same necessity, perhaps, for cutting prices as there was when there were great stocks of coal pressing on the market.

Mr. SHEARN. You attribute the excellent results obtained during the year to the harmonious spirit with which the interests had conducted this business? What does that mean—harmonious spirit—absence of competition?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. What does it mean?

Mr. TEUESDALE. Well, it is referred to there—a disposition to fairly consider the whole interest, the interest of your neighbors, and do that which will not unduly interfere with their interests.

1588 Mr. SHEARN. Those things which would unduly interfere with their interests would be such things as rate cutting and price cutting?

Mr. TRUESDALE. That would be one.

Mr. SHEARN. Are those the things you had in mind when you referred to this harmonious spirit?

Mr. TRUESDALE. I do not know. I can not say exactly what I did particularly have in mind at that time.

Mr. SHEARN. When you said you looked forward to an indefinite continuance of these favorable conditions you were referring to an indefinite continuance of this harmonious spirit, were you not?

Mr. TRUESDALE. I do not know whether I was or not—a continuance of general business conditions there.

Mr. SHEARN. That appears to refer to this most harmonious spirit with which the business was conducted. What ground had you for believing that this great and growing industry would continue to be handled in the most harmonious spirit for an indefinite period of time?

Mr. TRUESDALE. That seemed to be the outlook at that time, and has continued, so far as I have observed.

Mr. SHEARN. Is that the outlook to-day?

1589 Mr. TRUESDALE. It is subject to what I stated a few minutes ago, as to what might result when the stocks of anthracite coal accumulate.

Mr. SHEARN. You just said that you thought when conditions became normal again there would be competition between the companies.

Mr. TRUESDALE. I said there is competition to-day.

Mr. SHEARN. But you thought it would be keener when conditions became normal, you said.

Mr. TRUESDALE. There is nothing hampering or restricting competition to-day except market conditions.

Mr. SHEARN. Then there was nothing in particular that warranted you in believing that this most harmonious spirit would continue indefinitely?

Mr. TRUESDALE. I do not think there was, excepting as conditions then obtained and during that year.

Mr. SHEARN. Does this harmonious spirit prevail also in the matter of going into the territory of different roads and competing for traffic?

Mr. TRUESDALE. General traffic?

Mr. SHEARN. No; for coal traffic.

1590 Mr. TRUESDALE. I do not think I understand you.

Mr. SHEARN. I say is the business of obtained coal traffic by your different roads carried on also in this same most harmonious spirit or is there keen competition?

Mr. TRUESDALE. You mean in the transportation of coal?

Mr. SHEARN. Yes, sir.

Mr. TRUESDALE. Well, I think, generally, the relations existing between the leading carriers of the country are more harmonious on their face than they have been for a long time.

The CHAIRMAN. One moment. Permit me to say, for the benefit of counsel, that Commissioners Prouty and Fifer are leaving town by a train which requires them to go at this time. Commissioner Yeomans and myself will continue the session until the usual hour of adjournment.

Mr. SHEARN. Shall we continue with Mr. Truesdale?

The CHAIRMAN. Oh, yes; go right along.

Mr. SHEARN. Now, with reference to the matter of obtaining coal transportation—coal traffic—by these railroads, Mr. Truesdale,

1591 has this same harmonious spirit which you speak of in your report prevailed since the early part of 1901?

Mr. TRUESDALE. General transportation—transportation of all traffic?

Mr. SHEARN. No, sir; of coal.

Mr. TRUESDALE. Bituminous coal?

Mr. SHEARN. Anthracite coal.

Mr. TRUESDALE. Yes; the relations, so far as I know, have been maintained.

Mr. SHEARN. In this same harmonious spirit?

Mr. TRUESDALE. In this same harmonious spirit.

Mr. SHEARN. That is to say, you have not actively competed with other roads for coal traffic—anthracite coal traffic—during that period?

Mr. TRUESDALE. We have solicited any that was available to our line.

Mr. SHEARN. Have you made any special efforts to get coal traffic away from any other railroad that tapped the same region you did?

Mr. TRUESDALE. I do not know of any special effort. We furnished the necessary facilities to handle coal over our line that anybody desired us to handle.

1592 Mr. SHEARN. You have also maintained a freight rate that brought all anthracite coal to tide-water points at the same freight rate, irrespective of the distance, have you not?

Mr. TRUESDALE. What do you mean by that?

Mr. SHEARN. Well, for instance, you charge, do you not, the same rate for hauling anthracite coal one hundred and forty-five miles that the Reading does for hauling it one hundred and ninety miles?

Mr. TRUESDALE. I do not know exactly what the Reading rates are.

Mr. SHEARN. Well, the Reading rate from, say, Pine Grove, Pennsylvania, to Port Reading, Staten Island, one hundred and ninety miles, is $1.55.

Mr. TRUESDALE. I think our rate is $1.60.

Mr. SHEARN. Your rate from Scranton to Hoboken, one hundred and forty-five miles, is $1.60?

Mr. TRUESDALE. That rate from Scranton is one that obtains in the whole anthracite district that extends up and down the Lackawanna Valley, a distance of about one hundred and fifty miles.

1593 Mr. SHEARN. There is a difference of five cents marine freight between Port Reading, Staten Island, and Hoboken?

Mr. TRUESDALE. I have so understood.

Mr. SHEARN. You maintain such a rate for this shorter haul as will bring coal to Hoboken at the same rate for a longer distance. In other words, while the Reading gets $1.55 for a haul of 190 miles, you charge $1.60 for a haul of 145 miles, with the result, adding the difference of five cents marine freight, that the coal at Hoboken carries the same rate of freight from those different distances and different regions?

Mr. TRUESDALE. Yes, sir; and we have a rate of twenty-five or thirty cents on merchandise sometimes from Scranton to Hoboken, and the Jersey Central have the same rate for thirty or forty miles farther.

Mr. SHEARN. I am not talking about merchandise. I am talking about coal. You are able to carry your anthracite coal as cheaply as the Reading?

Mr. TRUESDALE. I am not familiar with the Reading Railroad.

1594 I do not know what the characteristics of it are. I do not know whether they have to haul coal up the grades that we do or not. I am under the impression that our grades are very much heavier from our mines than the Reading Company has to haul its coal over to tide water. I do not know as to this. I could not testify.

Mr. SHEARN. Speaking of the grades, what grade do you have to overcome from Scranton to Hoboken?

Mr. TRUESDALE. The heaviest grade is 80 to 90 feet to the mile.

Mr. SHEARN. What is the average grade?

Mr. TRUESDALE. I do not know what you mean by that.

Mr. SHEARN. From Scranton, coming in this direction, do you first have to haul up grade?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. For how long a haul?

Mr. TRUESDALE. About sixteen miles.

Mr. SHEARN. That is where the grade is heaviest, is it not?

Mr. TRUESDALE. Yes, sir; that is the heaviest grade.

1595 Mr. SHEARN. Then you come down grade toward tide from that point?

Mr. TRUESDALE. For some distance we come down grade, and then we strike more grades. It is what is called a very choppy grade line on our road.

Mr. SHEARN. I read in evidence from your report for the year ending December 31st, 1900, the following general remarks:

"The outlook for the future seems most promising. The recent transactions whereby certain important anthracite coal properties have changed ownership or control, concentrates this important industry in fewer hands than ever before and places it on a permanently better basis than hitherto.

"These changes, the prices paid for the properties transferred, the strength and conservatism of the interests acquiring same, all would seem to promise future market conditions that amount almost to a guaranty to this company of highly satisfactory results to its stockholders from both its extensive coal properties and its railroad operations.

1596 "The general rate situation during the past year has shown some improvement, though, as remarked in the previous annual report, the cutting of rates on a large amount of the east bound traffic of the trunk lines would seem to have been almost unwarrantable in view of the large tonnage moved during the year and the difficulty experienced during the greater part of it in furnishing cars and engi'es to handle the traffic offering.

"Had the same control of the rates on this traffic been exercised during the year as was apparently used in respect to rates on bituminous coal, through the community of ownership understood to exist between the large carriers of this commodity, much better net results would have been obtained by all the leading trunk lines of the East.

"There can be no doubt, however, that marked changes in the method of handling competitive traffic can be made without burden or detriment to the public at large and with great benefit to the railway companies.

"That the trend of affairs is in this direction admits of no question, and, when accomplished, this company will be in position to reap

1597 its full share of the benefits from the establishment of such an enlightened and businesslike method of handling the transportation interests of the country."

Did you write that?

Mr. TRUESDALE. I think I did.

Mr. SHEARN. This report is gotten out covering the year ending December 31, 1900. It was issued when—the 1st of January?

Mr. TRUESDALE. Early in 1901.

Mr. SHEARN. How long was that before circular No. 1, dated April 1st, 1901, was issued?

Mr. TRUESDALE. I do not know. It had not any reference to it.

Mr. SHEARN. What transactions did you refer to whereby "certain important anthracite coal properties have changed ownership or control," concentrating this important industry in fewer hands than ever before?

Mr. TRUESDALE. I think it was the one Mr. Thomas testified to yesterday.

Mr. SHEARN. The sale of the Pennsylvania Coal Company?

1598 Mr. TRUESDALE. The sale of the Pennsylvania Coal Company to the Erie Railroad.

Mr. SHEARN. What control of the rates on this traffic were you looking forward to, as express in this report?

Mr. TRUESDALE. I do not know that I had any special control of them in mind. I am very glad to say, however, that one was exercised through the suits brought at Chicago to enjoin the railroad companies from cutting rates. That is the only thing that I know of since that report was written that had the effect I had hoped.

Mr. SHEARN. You mean you were congratulating your stockholders on those suits and their probable successful outcome?

Mr. TRUESDALE. I did not know anything about it.

Mr. SHEARN. What control over rates were you looking forward to that you were congratulating your stockholders on?

Mr. TRUESDALE. There was nothing very definite, I think. It was about the time of the exploitation of the community of interest idea around here. It was very popular, as every one knows. My remarks, as I remember, pertained to that.

1599 Mr. SHEARN. What marked changes in the method of handling competitive traffic were you anticipating could be made with such great benefit to the railroad companies and without any detriment to the public?

Mr. TRUESDALE. Stopping rate cutting.

Mr. SHEARN. What was there in the situation that led you to believe the rates would be maintained?

Mr. TRUESDALE. Well, I do not know that there was anything, Mr. Shearn. I really thought something might in that direction come of a further extension of the community of interest idea that was abroad at that time.

Mr. SHEARN. You said "there can be no doubt, however, that marked changes in the method of handling competitive traffic can be made," and so forth, and that they would result, as I have read, and that the trend of affairs in this direction admits of no question. What was there going on that indicated that?

Mr. TRUESDALE. There was nothing particular in the anthracite industry that I had in mind. My remarks did not apply to that industry. They applied to commodities generally.

1600 Mr. SHEARN. It did not eliminate the anthracite situation?

Mr. TRUESDALE. It did not pertain to that. That is not what was referred to there at all—the remarks you quote.

Mr. SHEARN. "Had the same control of the rates on this traffic been exercised during the year as was apparently used in respect to rates on bituminous coal, through the community of ownership understood to exist between the large carriers of this commodity much better net results would have been obtained." You were talking about coal, were you not?

Mr. TRUESDALE. Bituminous coal.

Mr. SHEARN. Were you not comparing anthracite rates and prospects with the bituminous coal?

Mr. TRUESDALE. I was referring to the general railroad business.

Mr. SHEARN. In the preceding paragraph you were talking about recent transactions whereby certain important anthracite coal properties had changed ownership or control concentrating the industry in a few hands.

Mr. TRUESDALE. Then I went on as to the bituminous industry. It is an entirely different subject.

1601 Mr. ROSS. It seems to me, Mr. Chairman, this is all immaterial.

Mr. SHEARN. Bear in mind this is January, 1901. Now, just what did you have in mind as the plan which, when accomplished, would put your company in a position to reap its full share of the benefits from the establishment of such an enlightened and businesslike method of handling the transportation interests of the country; just what had you in mind?

Mr. TRUESDALE. A general toning up of the rate situation on miscellaneous freight.

Mr. SHEARN. A general increase of the rates?

Mr. TRUESDALE. A more businesslike way of handling the traffic matters of these railroads.

Mr. SHEARN. It had nothing to do with this concentration of important anthracite interests in a few hands?

Mr. TRUESDALE. No, sir; what you quoted had no reference to that. The fair reading of that shows that. There is no question about it.

Mr. SHEARN. You have increased the price of your coal 50 cents a ton over last year, have you not?

Mr. ROSS. I object, if the court please, on the ground that it is absolutely immaterial.

1602 The CHAIRMAN. We hold that those facts may be shown as they were.

Mr. ROSS. It has all been in. What is the use of wasting our time and that of the Commission?

The CHAIRMAN. I do not see. It has appeared several times, Mr. Shearn.

Mr. SHEARN. I am simply going to ask him another question. That is a fact, is it not?

Mr. TRUESDALE. It is.

Mr. SHEARN. What is the reason for that?

Mr. TRUESDALE. One of the chief reasons that lead to that increase was the increased wages we had to pay our mining employees and almost all employees connected with our railroad and our business generally, and the increase in cost of everything in the way of supplies and materials that enter into the cost of mining coal and transporting it.

Mr. SHEARN. You estimate that that increased cost will amount to 50 cents a ton?

Mr. ROSS. If the court please, I object. We have wasted enough time on it. Because I have the legal right to do so, I shall
1603 request the witness to decline to answer.

The CHAIRMAN. The question is within the rule which we have laid down.

Mr. ROSS. We will let that be certified to the court with the other questions.

The CHAIRMAN. If the witness declines to answer——

Mr. TRUESDALE. Under existing conditions, in the mining of coal, any merchant of good business judgment would reasonably increase the prices of his wares——

The CHAIRMAN. I understood the question to be in substance whether the increased cost of producing and transporting coal was equivalent to 50 cents a ton, the amount of the advance. That would seem to be the point of the question.

Mr. SHEARN. Yes, sir.

Mr. TRUESDALE. It is hard to tell whether that will more than cover the increased cost or not.

Mr. SHEARN. You try to allow a safe margin, I suppose?

Mr. TRUESDALE. We thought it was not an undue increase.

1604 Mr. SHEARN. Don't you know, from your experience and knowledge of the business, that the increase in wages will not make a difference of over fifteen cents a ton in the cost of producing anthracite coal?

Mr. ROSS. I object for the same reason. It is immaterial and irrelevent to this issue.

The CHAIRMAN. The objection is overruled.

Mr. ROSS. I advise the witness that he need not answer.

Mr. SHEARN. Do you decline to answer, Mr. Truesdale?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. The witness is directed to answer.

Mr. ROSS. The same objection and same ruling.

Mr. SHEARN. You are a director of the Temple Iron Company, are you not?

Mr. TRUESDALE. I am; yes, sir.

Mr. SHEARN. The Delaware, Lackawanna & Western Co.
1605 guarantees the payment of dividends and interest on the bonds and also the principal of the bonds of the Temple Iron Company in a certain percentage, does it not?

Mr. ROSS. I object. It is absolutely immaterial to the issues before this Commission. As heretofore stated, the Delaware, Lackawanna & Western is allowed to own stocks and bonds in other companies under the laws of Pennsylvania, and has the right to buy and sell coal, and this question is not pertinent to the issues before this Commission.

The CHAIRMAN. The objections are overruled.

Mr. ROSS. I request the witness to decline to answer.

Mr. SHEARN. You do decline?

Mr. TRUESDALE. I do.

The CHAIRMAN. The record may show that the witness declines to answer, notwithstanding he is directed to do so by the Commision.

Mr. SHEARN. Has the Delaware, Lackawanna & Western Railroad Company paid 12½ cents a ton to the Temple Iron Company since April 10, 1899, on all coal mined from the mines of the Temple Iron Company passing over its line as the initial line?

1606 Mr. ROSS. Same objection.

The CHAIRMAN. That may be shown. The objection is overruled.

Mr. ROSS. Read that question.

(The stenographer read the question as follows: "Has the Delaware, Lackawanna & Western Railroad Company paid 12½ cents a ton to the Temple Iron Company since April 10, 1899, on all coal mined from the mines of the Temple Iron Company passing over its line as the initial line?")

Mr. ROSS. The witness may answer if he desires to.

Mr. TRUESDALE. No, sir.

Mr. SHEARN. I put this question to you—if you can differentiate between your different capacities as a director of the Temple Iron Company—how much per ton has the Temple Iron Company received from the Delaware, Lackawanna & Western Company since April 10, 1899, on all coal from the mines of the Temple Iron Company passing over the Delaware, Lackawanna & Western Railroad as the initial line?

1607 Mr. TRUESDALE. I could not tell that without consulting our books.

Mr. SHEARN. Is it as much as 12½ cents a ton?

Mr. ROSS. Same objection.

Mr. TRUESDALE. I do not think so.

Mr. SHEARN. Is it as much as 10 cents a ton?

Mr. ROSS. Same objection.

Mr. TRUESDALE. I do not know.

Mr. SHEARN. As a director of the Temple Iron Company, has there to your knowledge been any withdrawal of tonnage from the Delaware, Lackawanna & Western Railroad Company of coal from the mines of the Temple Iron Company passing over or which customarily passed over the line of the Delaware, Lackawanna & Western Railroad since April 10, 1899?

Mr. TRUESDALE. I do not believe I understand that question.

Mr. SHEARN. Has there been to your knowledge, as a director of the Temple Iron Company, any withdrawal by the Temple Iron Company from the Delaware, Lackawanna & Western Railroad Company of tonnage from the mines of the Temple Iron Company that customarily passed over the Delaware, Lackawanna & Western Railroad as an initial line?

Mr. TRUESDALE. Customarily—what do you mean?

1608 Mr. SHEARN. That had been customarily passing over it prior to April 10, 1899.

Mr. TRUESDALE. I was president since March 1st, 1899. To my knowledge there has been no change. I really do not know what portion of the tonnage of the collieries now belonging to the Temple Iron Company formerly passed over the line of the Delaware, Lackawanna & Western Railroad. My understanding is, however, that since March

1st, 1899, we have had—the Delaware, Lackawanna & Western Railroad Company—substantially the same tonnage we previously had when those collieries were owned by Simpson & Watkins.

Mr. SHEARN. The Delaware, Lackawanna & Western reaches a number of collieries of the Temple Iron Co., does it not?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. One of them is the Mount Lookout Mine in Lackawanna County, is it not?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. There is another colliery of the Temple Iron Company in Lackawanna County reached by your road, is there not, that
1609 is also reached by the Delaware & Hudson and by the Erie?

Mr. TRUESDALE. I do not know what you refer to.

Mr. SHEARN. You know, of course, as a director of the Temple Iron Company, where the collieries are located and on what lines of road?

Mr. TRUESDALE. I do not know that I do.

Mr. SHEARN. Do you know how many collieries the Temple Iron Company has?

Mr. TRUESDALE. I could not say offhand. I think I could name them all.

Mr. SHEARN. Don't you know there is one reached by the Delaware, Lackawanna & Western and also by the Delaware & Hudson and also by the Erie?

Mr. TRUESDALE. No; I do not believe I do know it.

Mr. SHEARN. What roads reach the Temple Iron Company colliery known as the Mount Lookout?

Mr. TRUESDALE. The Lehigh Valley and our line.

Mr. SHEARN. Which line carries the coal?

Mr. TRUESDALE. We carry it in alternating months, the Lehigh Valley one month and we the next.

Mr. SHEARN. When was that arrangement made?

Mr. TRUESDALE. Long prior to my time, when the colliery was owned by Simpson & Watkins.

1610 Mr. SHEARN. Do you divide up the tonnage of any other Temple Iron Company collieries with any road, swapping months?

Mr. TRUESDALE. No; I think the tonnage of the Edgerton is divided.

Mr. SHEARN. With what companies?

Mr. TRUESDALE. I think the Central of New Jersey, the Lehigh Valley, the Erie, and the Lackawanna.

Mr. SHEARN. One taking one month and one another?

Mr. TRUESDALE. No; it is divided. There is no special division, but each has a share each month, I think.

Mr. SHEARN. Is that fixed by contract?

Mr. TRUESDALE. Well; I would not say. I could not say.

Mr. SHEARN. Did your becoming a director of the Temple Iron Company have anything to do with preserving the traffic you had customarily had from the mines of the Temple Iron Company?

Mr. TRUESDALE. Well, that has not been disturbed so far as I know since my connection with the company. As I said before, I do not
1611 think there was any change at the time Simpson & Watkins owned them and the Temple Iron Company.

Mr. SHEARN. Prior to your becoming a director of the Temple Iron Company, did you know that the Simpson & Watkins collieries would be sold to the Temple Iron Company?

Mr. TRUESDALE. I did not know anything about that.

Mr. SHEARN. Until it was consummated?

Mr. TRUESDALE. That was consummated prior to my connection with the Delaware, Lackawanna & Western.

Mr. SHEARN. Who was your predecessor as director of the Temple Iron Company from the Delaware, Lackawanna & Western?

Mr. TRUESDALE. I really do not know. I do not know that it had any. I do not know that the board was organized until after I came. The whole transaction was closed about the time I came.

Mr. SHEARN. Have you ever read over the contracts between the Delaware, Lackawanna & Western Railroad Co., and the Guaranty Trust Company of New York, and the Temple Iron Company?

Mr. TRUESDALE. I have; yes, sir.

Mr. SHEARN. You are familiar with their contents?

1612 Mr. TRUESDALE. Reasonably so; yes, sir.

Mr. SHEARN. Those contracts bear date in February and April, 1899, do they not?

Mr. TRUESDALE. I could not say from memory.

Mr. SHEARN. Do they provide for a guarantee of the stock and bonds of the Temple Iron Company by the Delaware, Lackawanna & Western Railroad Company?

Mr. ROSS. I object, if the court please. This whole question is to be certified to the court. Why should we waste time on it?

Mr. BUDD. Only the question as to the document itself has been passed upon—not the recollection of the witness of the contents.

Mr. ROSS. The contract is the best evidence.

Mr. BUDD. It may be the best, but it is not the only evidence. It may in any tribunal be proved by the recollection of a witness independent of the contract.

The CHAIRMAN. But the witness may decline to answer.

Mr. BUDD. Oh, yes; there is no question about that.

Mr. ROSS. I shall request the witness to decline to answer.

Mr. SHEARN. Do you decline to answer?

1613 Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Is the Plymouth Coal Company colliery located on your line?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Do you transport coal from that colliery?

Mr. TRUESDALE. I believe we transport some of it.

Mr. SHEARN. To tide—some of it to tide?

Mr. TRUESDALE. Some to tide water.

Mr. SHEARN. And some West?

Mr. TRUESDALE. Some West and some to points along our line of road.

Mr. SHEARN. Has the Delaware, Lackawanna & Western a contract with the Plymouth Coal Company?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. What rate of freight do you charge the Plymouth Coal Company for transporting its coal to tide?

Mr. TRUESDALE. I think it is our regular tariff rate.

Mr. SHEARN. Don't you know it is 35 per cent of the tide-water price?

Mr. TRUESDALE. Do I know that?

Mr. SHEARN. Yes, sir.

Mr. TRUESDALE. No; it is not on that basis at all.

1614 Mr. SHEARN. You do not think so?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. Have you any knowledge on the subject?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. What is the basis on which you transport that coal?

Mr. TRUESDALE. The tariff.

Mr. SHEARN. What is the tariff?

Mr. TRUESDALE. $1.60.

Mr. SHEARN. What system of rebate or repayment to that company is in vogue?

Mr. TRUESDALE. We have none.

Mr. SHEARN. What system, if any, of adjustment of rates to that company?

Mr. TRUESDALE. There is none, sir.

Mr. SHEARN. Is there any system of adjustment of rates on anthracite coal from the coal fields to tide water that is practiced or in effect by your company at all?

Mr. TRUESDALE. No, sir; there are two or three companies
1615 that ship coal to tide water, and we collect charges on that coal through our general office either weekly or semimonthly; I do not know which. I believe, as I recollect it, however, the rates charged the consignees of the coal coming from the Plymouth Coal Company mines was $1.58 on prepared sizes and lesser rates on the smaller sizes.

Mr. SHEARN. Why does that rate differ from the tariff?

Mr. TRUESDALE. That rate applies to coal shipped here by two or three other concerns.

Mr. SHEARN. How does it come about that you are making a different rate to those two or three concerns than the tariff rate?

Mr. TRUESDALE. That was made by a special arrangement by myself with representatives of those companies, they claiming to me that the difference you mentioned a short time ago of five cents a ton between the rate to the lower ports—the lower part of New York Harbor—and to the docks directly opposite the city did not apply on all the coal, and that a three-cent rate above the rate to the lower part of New
1616 York Harbor would be a fair adjustment as recognizing the difference between the harbor rates.

Mr. SHEARN. That coal all comes in over at Hoboken, does it not?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. And the rate to Hoboken is $1.60?

Mr. TRUESDALE. It is; yes, sir.

Mr. SHEARN. But the rate to these two or three companies you mentioned——

Mr. TRUESDALE. Any company that desires to ship has those rates.

Mr. SHEARN. The rate in effect with two or three companies is not the tariff rate, but is $1.58?

Mr. TRUESDALE. Yes, sir; that goes to any and all companies and is understood.

Mr. SHEARN. You do not publish that rate, do you?

Mr. TRUESDALE. We have not published the rate.

Mr. SHEARN. You know the law requires you to?

Mr. TRUESDALE. I presume it does.

Mr. SHEARN. Why have you not published it?

Mr. TRUESDALE. I know of no special reason.

Mr. SHEARN. What other companies other than the Plymouth Company enjoy this rate?

1617 Mr. TRUESDALE. Stickney & Cunningham ship over our line; Mosker & Righter and Marshall.

Mr. ROSS. The witness has already testified that that applies to all shippers.

Mr. TRUESDALE. Any and all coal that comes to tide water shipped by any independent shipper or miner of coal up there is charged those rates.

Mr. SHEARN. $1.58?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. Instead of the tariff?

Mr. TRUESDALE. Instead of the tariff.

Mr. SHEARN. Then, in reality, your tariff is $1.58 and not $1.60?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. As actually practiced?

Mr. TRUESDALE. Yes, sir. I think it is a matter publicly known by all persons interested in coal on our line. There is no effort made to conceal it.

Mr. SHEARN. Is there any further adjustment of rates between your company and any other companies or persons?

Mr. TRUESDALE. None, whatever.

Mr. SHEARN. You purchase coal from several private
1618 operators on a basis of 65 per cent of the tide-water price, do you not?

Mr. ROSS. I object to that as incompetent and irrelevant.

The CHAIRMAN. You may answer.

Mr. TRUESDALE. We do.

Mr. ROSS. I request him not to answer.

Mr. SHEARN. He has answered.

The CHAIRMAN. He may withdraw the answer if he desires to do so.

Mr. TRUESDALE. Well, it is immaterial.

Mr. ROSS. I want to give counsel notice that I raise the same objection as to these outside contracts.

Mr. SHEARN. You recollect the period of January, February, and March, 1903. In January, 1903, did your company suspend the operation of those 65 per cent contracts?

Mr. TRUESDALE. No, sir; we did not.

Mr. SHEARN. Did you continue to operate under them during that period?

Mr. TRUESDALE. We did.

1619 Mr. SHEARN. Did you pay over to the private operators 65 per cent of the price at tide water?

Mr. Ross. I object. It is irrelevent and immaterial.

The CHAIRMAN. The objection is overruled.

Mr. Ross. The witness is requested not to answer.

Mr. TRUESDALE. We bought that coal under the 65 per cent contracts—our regular contracts—and delivered the coal back to most of those operators at tide at our full circular price, $5 per ton. The contracts in operation were not suspended.

Mr. SHEARN. What was the object of that transaction—buying coal at the breaker and selling back at tide water?

Mr. Ross. Same objection.

Mr. TRUESDALE. We did not want to suspend the operation of the contracts. At the same time, there was some question involved under them as to whether we might not be called upon to pay the independent operators very large sums in excess of what we could afford to if we kept the coal and sold it at $5 a ton.

Mr. SHEARN. How many such contracts did you have?

1620 Mr. TRUESDALE. Which contracts?

Mr. SHEARN. The 65 per cent contracts

Mr. TRUESDALE. I think, perhaps, a dozen or fifteen.

Mr. SHEARN. In other words, rather than stand the risk of a law suit, you would license those men to prey upon the public and charge whatever price——

Mr. CARR. I object to such a question.

The CHAIRMAN. It is not a proper question.

Mr. TRUESDALE. We did it all under protest; the strongest protest we could make. We believed it was wrong and do not believe the operators benefited much by it. We were advised by our attorneys that we could not afford to take chances.

The CHAIRMAN. And you did not want to abrogate the contracts?

Mr. TRUESDALE. No, sir.

Mr. SHEARN. Your protest was somewhat modified by the receipts by you of 50 cents a ton on all such coal as you sold back to these men at tide water?

Mr. TRUESDALE. I do not recollect any——

Mr. SHEARN. You recollect that you got 50 cents a ton on

1621 every ton you turned over to them to sell at from $12 to $20 a ton in New York.

Mr. TRUESDALE. We got the regular price for which we sold to everybody.

Mr. SHEARN. Did you not buy at the tide-water price and sell back at the line price?

Mr. TRUESDALE. We bought at 65 per cent of our circular price.

Mr. SHEARN. You bought at 65 per cent of $5.00?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. What did you sell back for?

Mr. TRUESDALE. At $5.00.

Mr. SHEARN. Then you made the difference on every ton of coal they sold at these high prices——

Mr. TRUESDALE. We had to haul it from Scranton to Hoboken.

Mr. SHEARN. To be sure, but did you not in addition receive 50 cents on—in addition to the 35 per cent.

Mr. TRUESDALE. No.

Mr. SHEARN. During these months, then, you hauled coal from the coal fields to tide water at 35 per cent of $5; that is, for $1.75 a ton. That is correct, is it not?

Mr. TRUESDALE. That would be the way it would figure.

1622 Mr. SHEARN. You did not publish that tariff for $1.75 a ton here?

Mr. TRUESDALE. We bought the coal, we hauled it down here as we handle all of our coal, and sold it back to these people at five dollars a ton.

Mr. SHEARN. You did not make public or send to the Interstate Commerce Commission that tariff of $1.75 a ton?

Mr. ROSS. I object; that is not a proper question.

Mr. TRUESDALE. We charged in our accounts $1.60 for that coal, the same as I said this morning.

Mr. SHEARN. But you actually got $1.75?

Mr. ROSS. I object to that.

Mr. SHEARN. In what account did this fifteen cents difference go?

Mr. ROSS. I object; it is immaterial.

The CHAIRMAN. That is not the way I understand the transaction. I may be in the wrong. I inferred that they sold the coal back to these people at exactly the price sold to everybody else, $5 price.

Mr. SHEARN. What does that amount to? It means they got 35 per cent for hauling the coal. He said during this period he charged 35 per cent.

1623 The CHAIRMAN. Where was that sale, at tide water?

Mr. TRUESDALE. At tide water. We did not make $1.75; we charged in our books $1.60, Mr. Shearn, just as I told you this morning.

Mr. MOOT. I think Mr. Shearn has forgotten that there are other parties to this proceeding. Now, these people can charge $1.75 or $2.00 or $4.00 on their own coal if they want to. There is no law against it. I do not see why we should be compelled to sit here and listen to such examinations as these——

Mr. SHEARN. No doubt it is painful to you.

GOV. BUDD. It is the artifice we are looking for.

Mr. MOOT. The chairman of this Commission will tell you that they have ruled over and over again in such a circumstance as this; that it is no violation of the statute, and under those circumstances why should *be* be compelled to listen by the half day to this?

The CHAIRMAN. What more is there upon that point, Mr. Shearn?

Mr. SHEARN. The next thing on that point is the answer to my question.

(Question repeated by the stenographer.)

1624 Mr. CAMPBELL. At this point, f. o. b. Hoboken, this coal we are talking about was merchandise; property of the Delaware, Lackawanna & Western. They could sell it for forty dollars or fifteen cents, if they wanted to.

Mr. SHEARN. They can not boost their rate by any such artifice as that when the law compels them to file their rates with this Commission.

Mr. ROSS. I apprehend, Mr. Chairman, that the questions involved can not be intelligently considered by the Commission until the contract itself is before the Commission. Now, I say that it is not relevant.

The CHAIRMAN. It strikes me that you can not intelligently present your side of the questions, which are legitimate and pertinent to this

inquiry, without those contracts. You are constantly referring to them, and you need the substantial provisions of those contracts to explain your position in this case with reference to the reasonableness of the rate and the other questions which you concede are within the jurisdiction of this tribunal.

Gov. BUDD. If you do not let your witnesses answer, the law presumes the facts are being suppressed because they would be evidence against you. We have the fact from this witness that he charges 35 per cent, which is $1.75, but he enters upon his book $1.60. Now, there is fifteen cents that has gone some place. Judge Campbell claims they have a right to do it. The law uses the very word "artifice" to prevent this kind of double dealing.

Mr. ROSS. Governor, you do not seem to recollect that the Delaware, Lackawanna & Western has a charter.

Gov. BUDD. They may have forty, but as I understand, and as has been declared by the Supreme Court of the United States, a State can not give a charter to violate the laws of the United States. That has been very recently and strongly declared in regard to the charter of the Northern Securities people, and the circuit court of appeals but a short time since passed upon that matter and said that the State can not interfere in these matters.

The CHAIRMAN. That was a case——

Gov. BUDD. Of one corporation formed for the purpose of holding the securities of the other two.

The CHAIRMAN. It does not seem necessary to discuss the matter now. Now, they had contracts with these people on this 65 and 35 per cent basis. That is, they were bound to return to the sellers of that coal 65 per cent of the price at tide water.

Mr. ROSS. Those contracts were submitted to the Commission. Now we have taken the position——

The CHAIRMAN. Now, it don't matter what you call it, they brought the coal down here.

Mr. SHEARN. I have not called it anything; Judge Campbell called it something; if I call it anything, I call it piracy. He calls it legitimate and fair merchandising.

Gov. BUDD. We used the word used in the statute also, "artifice."

Mr. SHEARN. That is in the statute.

Gov. BUDD. Conspiracy is also in the statute.

Mr. SHEARN. Suppose they carried on their entire business in this way, how easy it would be for them to make a rate of two dollars a ton or three dollars a ton, if they saw fit. Of course that is really what this road does all the time.

The CHAIRMAN. This was their coal at the breakers under these purchase contracts?

Mr. SHEARN. It was not if this selling-back scheme was a mere artifice, because they didn't get title by a fradulent scheme like that which is nothing but an artifice; if that was a bona fide sale the title went to them, but if it was not intended this railroad should acquire title of coal which would enable them to get rid of it at any price they chose, then it was not a sale; then if it was a bona fide transaction and if that coal became the property of the Delaware, Lackawanna &

Western, and it had the right to do with it whatever they saw fit, I ask them why they turned it over to these men at tide water again to allow them to charge what they pleased for it? They could do as they pleased with it.

The CHAIRMAN. Yes; but their contract was to pay on the basis of the price at tide water.

Mr. SHEARN. It is their own price. It is the price fixed by these figures turned in by Mr. Ruley.

Mr. TRUESDALE. Not by any means. The claim they made, these high prices of ten, twelve, and fifteen dollars a ton, should be taken into consideration in figuring the tide-water price; now, take those figures and use them with the figures at which we sold our coal and it might have marked the price we had to pay for it way up above——

Mr. SHEARN. But this is your coal, according to your theory, and Mr. Ruley testified this morning——

The CHAIRMAN. Now, please, I do not see any occasion for a discussion of the matter, because the facts are

1628 but an artifice; if that was a bona fide sale the title went to them, but if it was not intended this railroad should acquire title of coal which would enable them to get rid of it at any price they chose, then it was not a sale; then, if it was a bona fide transaction and if that coal became the property of the Delaware, Lackawanna & Western, and it had the right to do with it whatever they saw fit, I ask them why they turned it over to these men at tide water again to allow them to charge what they pleased for it? They could do as they pleased with it.

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Mr. SHEARN. But this is your coal, according to your theory, and Mr. Ruley testified this morning——

The CHAIRMAN. Now, please, I do not see any occasion for a

1629 discussion of the matter, because the facts are undisputed. They had these purchase contracts. They did sell the coal back at five dollars a ton at tide water.

Gov. BUDD. How could they except as an artifice when he himself states he did not abrogate the contract? You can not go to work and go around a contract and make it good and valid and yet violate its terms.

The CHAIRMAN. That we can not decide now. It seems to me we need not discuss that now.

Mr. SHEARN. Was this provision whereby you sold back to them a matter of written contract?

Mr. TRUESDALE. No, sir; matter of correspondence.

Mr. SHEARN. That is, you proposed this to them and they accepted it?

Mr. TRUESDALE. Yes, sir.

Mr. SHEARN. The proposition came from you, then, and not from them?

Mr. TRUESDALE. Well, I do not know whether the proposition came from us. Their proposition was that we turn the coal back to them at the mines. We were only to do that. We thought that would suspend the agreements, and we were not willing to do that.

1630 Mr. SHEARN. Then for three months the Delaware, Lackawanna & Western Railroad Company charged these independent operators, who were 12 or 15 in number, $1.75 a ton for bringing their coal to tide water?

Mr. TRUESDALE. No, sir.

Mr. CAMPBELL. I object to that.

Mr. TRUESDALE. No, sir; that is not what I said.

Mr. SHEARN. Well, they charge 35 per cent of five dollars on each ton of coal.

Mr. MOOT. This is objected to. The terms of the contract will decide that.

Mr. SHEARN. Well, it retained out of these so-called purchases thirty-five per cent of five dollars a ton all during that period?

Mr. MOOT. I object.

Mr. TRUESDALE. We purchased that coal from them at the mines, and paid for it on voucher the same as we always done, 65 per cent of the average price at tide water obtained by the company, the average circular price; we made up against them the same way we made up against any other customer down here for that coal that we turned back to tide water at our circular price.

1631 Mr. SHEARN. That is to say, you retained thirty-five per cent of five dollars on every payment of coal that was shipped to tide water during those months?

A. I just stated to you accurately——

Mr. MOOT. For my client I object to that; I have not seen counsel show so much animation in behalf of the independent operators, but I do not see how it reaches this case.

Mr. SHEARN. You made that same old speech up before the attorney-general. If you have got the idea that I am either representing or sympathizing with these independent operators you make a mistake. You ought not to take so many days off at Buffalo——

The CHAIRMAN. That is quite enough, gentlemen.

Mr. SHEARN. I do not think I want to ask any more questions.

The CHAIRMAN. Do counsel for the respondents desire to ask Mr. Truesdale any further questions?

Mr. ROSS. No.

The CHAIRMAN. The witness is excused.

1632 SAMUEL T. PETERS, a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination:

Mr. SHEARN. You are a coal merchant, are you not; seller of coal?

Mr. PETERS. I am.

Mr. SHEARN. In the city of New York?

Mr. PETERS. Yes.

Mr. SHEARN. What is your full name?
Mr. PETERS. Samuel T. Peters.
Mr. SHEARN. You are a member of the firm of Williams & Peters?
Mr. PETERS. I am.
Mr. SHEARN. For what companies are you the sales agent?
Mr. PETERS. We handle the product of the Hillside Coal & Iron Company, Pennsylvania Coal Company, and the New York, Susquehanna & Western.
Mr. SHEARN. And no other?
Mr. PETERS. That is in connection with our regular business of buying and selling coal.
Mr. SHEARN. Do you buy from other companies than those?
1633 Mr. PETERS. We do.
Mr. SHEARN. What other companies?
Mr. PETERS. We buy from other companies than those; we buy from almost all the companies that are represented; have for twenty-five years.
Mr. SHEARN. Do you sell coal for the Hillside Coal & Iron Company, and the Susquehanna & Western Coal Company, and the Pennsylvania Coal Company on commission?
Mr. PETERS. We do.
Mr. SHEARN. Is the commission the same for each of those companies?
Mr. PETERS. It is.
Mr. SHEARN. How much is it a ton?
Mr. PETERS. I decline to answer.
Mr. MOOT. One moment. Here is a merchant selling coal on commission, not a party to this proceeding.
The CHAIRMAN. Have you any objection to stating what your commission is?
Mr. PETERS. I have, sir.
Mr. SHEARN. Perhaps he has; but that does not follow that he shall be excused from stating it. Without going over it all again—we have been over it many times before—it is important to us to find out
1634 how much is left to these companies out of the proceeds of the sale of coal at tide water, and the only way to get at that is to show all the different elements. One element is commission.
The CHAIRMAN. You might as well get to the point and let this whole question go to the courts. Now, you ask him what the commission is?
Mr. SHEARN. Yes.
The CHAIRMAN. And to that objection is taken, and the objection is overruled.
Mr. SHEARN. How much commission do you get per ton?
Mr. MOOT. I object.
Mr. SHEARN. That objection has been passed upon.
The CHAIRMAN. It is for the witness to say whether he declines to answer.
Mr. MOOT. I advise the witness to say that he declines to answer, on the ground that he is not a party to this proceeding; that he has nothing to do with the rate, or with discrimination, or with any charge that is brought.

Mr. SHEARN. Does counsel appear for this witness?
Mr. MOOT. Yes.
Mr. PETERS. With all due respect to you, Mr. Commissioner, I decline to answer.
1635 The CHAIRMAN. The Commission directs the witness to answer the question, and notwithstanding that direction he declines.
Mr. SHEARN. Do you?
Mr. PETERS. On advice of counsel.
Mr. SHEARN. And for no other reason?
Mr. PETERS. For no other reason.
Mr. SHEARN. Do you guarantee to those companies the sales of coal; in other words, suppose there is a loss through some customer, who stands the loss, you or the company?
Mr. PETERS. We do.
Mr. SHEARN. And that is taken into consideration in fixing your commission, I suppose?
Mr. PETERS. Very probably.
Mr. SHEARN. To whom do you remit the proceeds of the sales of the Hillside Coal & Iron Company coal?
Mr. PETERS. To the various treasurers of the companies.
Mr. SHEARN. Of what companies?
Mr. PETERS. The companies whose product we sell.
Mr. SHEARN. To whom do you make out the checks?
Mr. PETERS. Treasurers.
1636 Mr. SHEARN. What is his name—of the Hillside Coal & Iron Company?
Mr. PETERS. Platten.
Mr. SHEARN. J. W. Platten?
Mr. PETERS. I think so.
Mr. SHEARN. Who was the treasurer of the Erie Railroad Company?
Mr. PETERS. That I do not know.
Mr. SHEARN. To what place do you send the checks?
Mr. PETERS. To the headquarters of the various companies.
Mr. SHEARN. To what place do you send the checks representing the proceeds of coal of the Hillside Coal & Iron Company?
Mr. PETERS. To the treasurer of the Hillside Coal & Iron Company at his headquarters.
Mr. SHEARN. Where?
Mr. PETERS. In Cortlandt street, New York.
Mr. SHEARN. What number?
Mr. PETERS. To tell you the truth, I really do not recall; it is
1637 corner of Church and Cortlandt street, in the Delaware & Hudson Canal Company Building.
Mr. SHEARN. To what person do you remit the proceeds of the sales of the Pennsylvania Coal Company coal?
Mr. PETERS. To the treasurer of the company.
Mr. SHEARN. Who is Mr. J. W. Platten?
Mr. PETERS. I think he is.
Mr. SHEARN. Do you send that to the same address?
Mr. PETERS. Precisely.
Mr. SHEARN. To whom do you remit the proceeds of the sale of—what is the other name you gave?

Mr. PETERS. New York, Susquehanna & Western.
Mr. SHEARN. New York, Susquehanna & Western.
Mr. PETERS. I presume it is the same party.
Mr. SHEARN. J. W. Platten?
Mr. PETERS. I presume so.
Mr. SHEARN. How do you make out the checks—to J. W. Platten, or J. W. Platten, treasurer, or how?
Mr. PETERS. Well, I am not sure whether I made it to the order of J. W. Platten, treasurer, of the Pennsylvania Coal Company, or the Pennsylvania Coal Company endorsed by him.
Mr. SHEARN. Well, there are a great many such checks made
1638 out in the course of a year and in the course of a month?
Mr. PETERS. I presume there are.
Mr. SHEARN. They come under your observation, and you sign them?
Mr. PETERS. They might come under mine or Mr. Williams' or some other representative of the office who had power of attorney to sign.
Mr. SHEARN. Don't you know how those checks are made out?
Mr. PETERS. From memory I should say they were made out to Mr. Platten, as treasurer of the various companies.
Mr. SHEARN. As treasurer of the various companies?
Mr. PETERS. I think so.
Mr. SHEARN. Do you deduct from the proceeds the amount of your commission?
Mr. PETERS. We do.
Mr. SHEARN. Who tells how much to charge for the coal—Hillside Coal & Iron Company?
Mr. PETERS. Well, we generally talk with the officers of the Erie road from time to time and watch what our competitors are doing.
1639 Mr. SHEARN. With what officers of the Erie road do you talk?
Mr. PETERS. Sometimes with the president of the Erie road, who is the officer of the various coal companies, or for the previous months, Mr. Cumming, who is the vice-president or president of one of the companies.
Mr. SHEARN. What is the price of their coal to-day, prepared sizes?
Mr. PETERS. Prepared sizes is $4.60 on board.
Mr. SHEARN. What was it yesterday?
Mr. PETERS. $4.50.
Mr. SHEARN. From whom did you get your instructions to make the increase of ten cents a ton?
Mr. PETERS. That was the—we see the circulars that are issued by the other companies similarly situated.
Mr. SHEARN. What other companies?
Mr. PETERS. Various companies doing business at tide water and other points.
Mr. SHEARN. Name them.
Mr. PETERS. The Philadelphia & Reading, and I think the Lehigh Valley; there may be several others that I do not recall.
1640 Mr. SHEARN. When did you get the circulars?
Mr. PETERS. We received circulars from them on the 1st of April or the latter part of March.
Mr. SHEARN. Stating what the price would be for several months in advance?

Mr. PETERS. Outlining it.

Mr. SHEARN. Have you any of those circulars with you?

Mr. PETERS. None whatever.

Mr. SHEARN. They are at your office?

Mr. PETERS. They are.

Mr. SHEARN. Will you please preserve them until the next hearing?

Mr. PETERS. With pleasure.

Mr. SHEARN. Are you able to state from your knowledge of those circulars what the price of coal will be on the 1st of May—prepared sizes?

Mr. PETERS. I presume to-day is the 1st of May; I have just given it to you.

Mr. SHEARN. On the 1st of June?

Mr. PETERS. I presume if there is no interruption in traffic and coal mining it will be ten cents a ton higher.

1641 Mr. SHEARN. And on the 1st of July?

Mr. PETERS. Ten cents a ton higher than the 1st of June.

Mr. SHEARN. And on the 1st of August?

Mr. PETERS. The same relative advance.

Mr. SHEARN. And on the 1st of September?

Mr. PETERS. It will then be five dollars, price f. o. b., for prepared sizes, with the exception of grate coal, which will be $4.70.

Mr. SHEARN. That will continue until further orders?

Mr. PETERS. I do not know what you mean by further orders.

Mr. SHEARN. Are you at liberty to charge whatever you please for this coal?

Mr. PETERS. We are at liberty to look over the market conditions.

Mr. SHEARN. Are you at liberty to charge what price you please for the coal of these companies?

Mr. PETERS. I would not presume that—we would protect our companies' interests without asking any questions if we found the

1642 market had broken or conditions had been reversed in any shape.

Mr. SHEARN. Are you at liberty to sell the coal in these three companies or either one of them at any price you please?

Mr. PETERS. I presume they would entrust that power to us, providing, in our turn, we were protecting their best interests.

Mr. SHEARN. You know what your arrangement with them as sales agent was. I want to know if under your arrangement with them you are permitted to charge for that coal whatever price you please.

Mr. PETERS. I presume we have been employed by them on a commission basis to look after the interests.

Mr. SHEARN. I want your knowledge, I do not want your presumption.

Mr. PETERS. I am very much obliged to you.

Mr. SHEARN. Have you authority, Mr. Peters, to charge any price you please for the coal of these three companies?

Mr. PETERS. It would entirely depend upon the conditions. If the conditions were such that I considered it was warranted, I would take that authority.

Mr. SHEARN. What would those conditions be?

1643 Mr. PETERS. They remain to be brought forth at the time when the prices would be changed.

Mr. SHEARN. Well, I do not understand that.

Mr. PETERS. Well, I do not know that I could make the conditions to-day.

Mr. SHEARN. There are conditions prevailing to-day that give you authority to make a different price from the circular price, are there?

Mr. PETERS. There is no necessity of it to-day.

Mr. SHEARN. Are there any conditions prevailing to-day which give you the authority?

Mr. PETERS. I say, there are no conditions to-day.

Mr. SHEARN. There are no conditions? Well, there is a condition of the market, isn't there?

Mr. PETERS. The condition of the market at the present time is that it will take all the coal that is being mined.

Mr. SHEARN. There is a certain supply and a certain demand?

Mr. PETERS. We can not create the supply.

Mr. SHEARN. Now, under the conditions that are prevailing to-day, have you the authority under your arrangement with these com-
1644 panies to charge whatever price you please for their coal?

Mr. PETERS. As the conditions prevail to-day I see no basis nor reason for changing my prices as given to you.

Mr. SHEARN. I ask the court to direct the witness to answer the question.

The CHAIRMAN. Well, you say any price he pleases——

Mr. SHEARN. Well, any price other than the circular price?

The CHAIRMAN. What is your answer?

Mr. PETERS. Mr. Commissioner, if you will permit me, I would state that the conditions have been since 1891 such that we have seen no trouble or reason in obtaining as much money for the products of the various companies we represent as the amount received by other people similarly situated.

Mr. MOOT. 1901, I suppose you meant, Mr. Peters?

Mr. PETERS. 1901.

The CHAIRMAN. The real question is, have you any discretion about the price? Can you shade it if you choose to do it?

Mr. PETERS. I would presume we had if the conditions war-
1645 ranted it, and would assume that responsibility absolutely.

Mr. SHEARN. Have you done it since April, 1901?

Mr. PETERS. I don't know that we have in a specific case; I do not know that it has been necessary, Mr. Shearn. As I have stated, the conditions are such that the prices that our competitors obtained for their product has been a satisfactory one, and we have been able to dispose of every pound of coal, not only the companies we represent, but whatever coal we have been able to purchase.

Mr. SHEARN. You do not know what price you are going to charge for this coal until you get the circular?

Mr. PETERS. I do not know that that is so. If there was no circular issued we might make up our minds what to do.

Mr. SHEARN. But the circulars have been issued.

Mr. PETERS. Precisely.

Mr. SHEARN. Did you know prior to the 1st day of April this year that you were going to charge $4.50 a ton for this coal instead of $4.00 a ton as of the same time last year?

1646 Mr. MOOT. Now, if the Commissioner please, every question of this character is immaterial. The public and everybody who is listening to this Commission would suppose that what is being tried here is what price is being charged for coal. Nobody could imagine who listens to this testimony—could really believe that we were trying the question of rate. So I object to that question.

The CHAIRMAN. Has he the right?

Mr. MOOT. Yes; he has the right under the law and under the Constitution to fix the price of coal. There is no question about that. No court has the power to interfere with him.

The CHAIRMAN. Then you may answer that.

(The question was repeated by the stenographer.)

The CHAIRMAN. What is your answer to that? Did you know before the 1st of April that you were going to charge $4.50 for coal on that day?

Mr. PETERS. I may have known it a day or two prior to that.

Mr. SHEARN. What happened on that day or two prior to that to give you this information?

Mr. MOOT. Now, I object to this on the ground that is not relevant or competent.

1647 The CHAIRMAN. It is the same question we have had before. I would like to dispose of this witness before we get through to-night.

Mr. SHEARN. I am not preventing——

The CHAIRMAN. You are going over the same ground.

Mr. SHEARN. I propose, if the Commission please, to go over this ground very thoroughly. If this witness chooses to be contumacious I want it to appear on the record. I do not want to delay at all, but this goes right to the meat of this whole question.

(The question was repeated by the stenographer.)

The CHAIRMAN. You may answer, Mr. Peters.

Mr. PETERS. Our general business, Mr. Commissioner, if you will permit me to take your time——

Mr. SHEARN. I do not want your general business at all.

Mr. MOOT. You will have to have it, or I will instruct the witness not to answer, sir. I will see that the witness's rights are protected.

The CHAIRMAN. Let him answer the question.

Mr. SHEARN. I think we have had enough of this wandering off into the field of theory and speculation.

1648 Mr. PETERS. I have been in the wholesale coal business for about twenty-seven years——

Mr. SHEARN. I move we adjourn.

Mr. PETERS. And the various representatives of the different companies, some of whom have been personal friends of mine for all those years, they would naturally stop in our office. We do business, we gossip, and talk about credits and condition of the market; and coming to the 1st of April, which is reaching the point Mr. Shearn asks about, the question of prices came up. "What do you think?" "What do you know?" And it is brought out in a few days prior to that, "Well, I understand the Reading Company is going to do so and so." They are the largest producers. We look to them as the fathers of the anthracite trade—they have been in a great many years—and when they have made their figures

we endeavor to get as much money for the product of the people we represent as the Reading; if we could not I do not think we could hold our jobs.

Gov. BUDD. The witness has been asked what the price was and how it was fixed, and he stated it was fixed by a circular. Now, in answer to a question a while ago as to whether he knew what it would be to-day or how it would be to-day—he said he might have known
1649 a day or two before April 1st. Now, Mr. Baer went on the stand yesterday and he pleasantly and smilingly informed us of forty different things we did not ask him. Let us stop this wandering and presuming in answer to questions. Can't this witness say what occurred two days before, not what occurred twenty-seven years ago? We are not to be deterred by the terrible threat they make that they will close the mouth of this witness. I understand this Commission will get at the facts ultimately, and if they can not get at the facts, the endeavor to suppress them shows that they are facts against them.

Mr. MOOT. If the counsel will make a motion to strike it out on the ground that it is not responsive I will object to that being done; then we will have that question for future argument.

The CHAIRMAN. The question implied that some particular and moving thing happened a day or two before.

Mr. SHEARN. He so stated.

The CHAIRMAN. The witness is understood by me to say in substance something to the contrary, and has given the various things that led him to believe this price would be so and so after the 1st of April.

1650 Mr. SHEARN. I respectfully suggest that we adjourn at this time.

(The question repeated by the stenographer.)

The CHAIRMAN. Now, answer that question.

Mr. MOOT. I submit that the witness has answered.

The CHAIRMAN. Did you get any instructions?

Mr. PETERS. No, sir.

The CHAIRMAN. In reference to this price?

Mr. PETERS. No, sir.

The CHAIRMAN. Did anything particular occur?

Mr. PETERS. No, sir; nothing.

Mr. SHEARN. What did you mean, that something happened two days before to give you the information that you were going to charge $4.50 a ton for coal on the 1st day of April?

Mr. MOOT. Now, I object. This is one of the assumptions of counsel in asking his own witness a question that is improper.

Gov. BUDD. An adverse witness may be cross-examined.

The CHAIRMAN. I understand.

Gov. BUDD. We do not take this witness as ours.

Mr. PETERS. I don't think, Mr. Commissioner, if you will permit me, that I said two days before.

1651 Mr. SHEARN. Read his answer.

The CHAIRMAN. Can you tell us when and what it was that led you to believe or to know the price at which coal would be sold on and after the 1st day of April?

Mr. PETERS. Nothing further than the statement I made that I understood the figures that the Reading Company were going to ask for their

coal. The trade has been very much excited for a year or two, all the retail dealers and manufacturers all through the country have been in the habit of receiving spring prices in April for years——

Mr. SHEARN. I object and ask you to halt him.

Gov. BUDD. Halter him.

The CHAIRMAN. It seems to me to be responsive.

Mr. SHEARN. It does not make the same impression on me.

The CHAIRMAN. Go on, Mr. Peters, if you have any further reason to give.

Mr. PETERS. Nothing whatever, but that the trade was looking for a change of prices; that as merchants we were naturally looking and hunting for gossip and listening to gossip with the idea of regulating our business on the ordinary business line.

1652 Mr. SHEARN. Then you fix the price according to the gossip that comes into your office?

The CHAIRMAN. He does not say that.

Mr. SHEARN. Did a price circular come into your office a day or two before the 1st day of April, 1903?

Mr. PETERS. Price circular?

Mr. SHEARN. A price circular.

Mr. PETERS. I don't recollect that it did. I really don't recall that?

Mr. SHEARN. I thought you said that you were in the habit of getting them and that they were in your office and you would preserve them until the next hearing?

Mr. PETERS. I did not say they came in a day or two before. I said I did receive circulars.

Mr. SHEARN. What day did they come in?

Mr. PETERS. No regular date; they might come in the first of the month or the last day of the preceding month.

Mr. SHEARN. If they came in from the Delaware, Lackawanna & Western, they would come in on the 1st day of the month?

1653 Mr. PETERS. I really have not the slightest idea.

Mr. SHEARN. Haven't you any recollection what day you get the Reading circulars?

Mr. PETERS. Not the slightest.

Mr. SHEARN. Is your recollection specially poor?

Mr. PETERS. I really have never been examined on that particular line up to the present time.

Mr. SHEARN. Nothing has happened that you can recollect to destroy your memory——

Mr. PETERS. I do not see that there is anything in your questions to disconcert me in any form or shape.

Mr. SHEARN. Don't you know that the Delaware, Lackawanna & Western circulars have been—excepting during the time of the strike—invariably dated on the first day of the month?

Mr. PETERS. I know nothing at all about the general business of the Lackawanna.

Mr. SHEARN. You have seen them?

Mr. PETERS. I have, very likely, in the ordinary course of business.

Mr. SHEARN. And you have read them, haven't you?

1654 Mr. PETERS. I presume I have, and compared them with whatever prices we thought we could get for the product we were handling.

Mr. SHEARN. Are you not able to recollect what date these circulars borne month in and month out?

Mr. PETERS. I think I have answered that question.

Mr. SHEARN. Are you not able to recollect what date these circulars bore month in and month out?

Mr. PETERS. I am not.

Mr. SHEARN. You say you are not able?

Mr. PETERS. I am not.

Mr. SHEARN. Are you able to state what date the Reading Coal & Iron Company circulars have borne month in and month out?

Mr. PETERS. I am not, except from memory, which would not, possibly, be correct.

Mr. SHEARN. Are you able to recollect what date the Lehigh Valley Coal Company circulars bore?

Mr. PETERS. I am not.

Mr. MOOT. Wait a moment. If your honor please, I know some of the lawyers here are pretty busy, and certainly we can not sit over the hour of adjournment to hear these questions.

1655 Mr. SHEARN. Well, I suggested that we adjourn.

The CHAIRMAN. There is so little evidence bearing on this case that you can get from this witness——

Mr. SHEARN. I don't think that is so. I do not think, from my investigation of the case, that the chairman could know in advance what this witness knows, because we know how his business is conducted, and I desire to bring out those facts before the Commission, and I think they are vitally important in this case.

Mr. MOOT. These circulars are circulated by the hundreds and thousands all over the States.

Mr. SHEARN. I am now asking him about the Lehigh Valley.

The CHAIRMAN. Ask another question.

Mr. SHEARN. Yes; I ask the same question.

Mr. MOOT. Well, I object to this line of questioning.

(Last question repeated by the stenographer.)

Mr. PETERS. I do not recollect the contents of the Lehigh Valley circulars.

Mr. SHEARN. Couldn't you recollect if you tried to?

1656 Mr. PETERS. I don't think I could. I could give you no different answer.

Mr. SHEARN. Don't you recollect that all of those circulars are received by you customarily on the same day?

Mr. PETERS. I don't recollect that.

Mr. SHEARN. Do you recollect that they are received on different days?

Mr. PETERS. I do not recollect that.

Mr. SHEARN. You recollect as far back as the 1st of April, don't you, of this year?

Mr. PETERS. I do, sir.

Mr. SHEARN. Do you recollect getting a Reading circular—Reading Coal & Iron Company circular—on the 1st of April this year?

Mr. PETERS. I do not recollect getting one on the 1st of April this year.

Mr. SHEARN. Do you recollect getting one the day before the 1st?

Mr. PETERS. I do not remember the date our firm received a circular.

Mr. SHEARN. You do recollect that there was this advance
1657 made in the price on the 1st day of April, 1903; that made some impression upon your mind, didn't it?

Mr. PETERS. I didn't consider it an advance, Mr. Shearn. I thought it was a reduction.

Mr. SHEARN. Reduction from what prevailed on the 1st of April in the preceding years?

Mr. PETERS. I didn't mention the dates at which it was a reduction from.

Mr. SHEARN. I suppose you think that the rate to-day is a reduction over that of yesterday, on the same line of reasoning?

Mr. PETERS. I am very much obliged to you, sir.

Mr. CARR. Will the Commission pardon me for saying that questions on that line here at this hour of the day are certainly unpardonable?

Mr. SHEARN. I am not responsible for the hour of the day.

Mr. PETERS. I think I am entitled to a certain amount of protection from the court in regard to such questions as you have just asked.

Mr. SHEARN. I think you have enough counsel here to protect you. Do you recollect receiving a Lehigh Valley Coal Company circular on the 1st day of April, 1903?

1658 Mr. PETERS. I presume there was one received in the office.

Mr. SHEARN. Do you recollect receiving a Delaware, Lackawanna & Western circular on the 1st day of April?

Mr. PETERS. I do not know what date it may have been received, during the month of April or not; I presume there is a circular of prices received at the office.

Mr. SHEARN. Don't you recollect that these circulars have been received by you on or about the 1st of the month?

Mr. PETERS. I think they have been on or about the 1st of the month.

Mr. SHEARN. That is your recollection, is it?

Mr. PETERS. Precisely.

Mr. SHEARN. From April 1st, 1901, on, with the exception of the period during the strike?

Mr. PETERS. I presume that is so.

Mr. SHEARN. That is the way I understand it. Now, then, what did those circulars have to do with your fixing the price of the Hillside Coal & Iron Company, and the Pennsylvania Coal Company, and the Susquehanna & Western Coal Company coal for the next five months?

1659 Mr. PETERS. I do not know as it necessarily had been fixed for five months.

Mr. SHEARN. Well, you have announced it for five months?

Mr. PETERS. All those announcements are made subject to interruptions of all characters.

Mr. SHEARN. Subject to interruptions; but I say, what effect did those circulars have on your announcing the price that you did announce for the ensuing five months?

Mr. PETERS. It placed us in position to look after our trade, to advise them what they might expect under ordinary conditions, so that they could go ahead and attend to their business properly.

Mr. SHEARN. They determined, did they not, in your mind, what you should charge for the coal of those three companies during the next five months if there were no interruptions?

Mr. PETERS. Precisely.

Mr. SHEARN. And you had no word from either of those three companies pertaining to what you should charge for their coal for those five months?

Mr. PETERS. Not that I recollect; we very likely discussed with
1660 some of the officers of the coal company what we understood the Erie Company or other companies similarly situated were going to ask for their coal in the ordinary channels of business.

Mr. SHEARN. Who determines how much a ton advance there shall be each month during the five months?

Mr. PETERS. That I could not tell you. I have no power over that.

Mr. SHEARN. You know now, don't you, what the advance is going to be—you have already testified—month after month, if there is no interruption, during the next five months?

Mr. PETERS. I presume that is correct.

Mr. SHEARN. How do you know that is going to be?

Mr. PETERS. I do not know, I have just stated.

Mr. SHEARN. Have you been told by anybody that is going to happen?

Mr. PETERS. I do not know that there is anybody who could predict anything that will happen.

Mr. SHEARN. If there are no interruptions?

Mr. PETERS. They very likely will maintain those prices.

1661 Mr. SHEARN. The change of price from month to month of ten cents a month?

Mr. PETERS. Precisely, the relative advance in price.

Mr. SHEARN. From whom did you receive your instructions to make that change month by month, instead of once in two months or once in three months?

Mr. PETERS. We do that in our ordinary business, having adopted the policy of other companies with the idea that we can obtain as much money for the product we sell as they can obtain for theirs.

Mr. SHEARN. Will you produce the price circulars that your firm has received from these different companies from April 1st, 1901, down to the present time, at the next hearing?

Mr. PETERS. I shall be pleased to.

Mr. SHEARN. That is all to-night.

Mr. ROSS. I may desire to recall President Truesdale after I have had a chance to look over his testimony.

The CHAIRMAN. You will have that opportunity. The Commission direct me to announce that this hearing will be adjourned until Tuesday, the 26th of May, inst., at half past ten o'clock in the morn-
1662 ing in this room. The hearing is adjourned to that time.

Mr. GOWEN. I desire to make a slight correction in the testimony of Mr. Skeele, who testified in answer to Mr. Shearn that the proceeds of sales of the Lehigh Valley Coal Company were remitted to the treasurer of that company. In point of fact these are paid to the Girard Trust Company of Philadelphia for account with the treasurer of that company.

The Commission then, at 4.45 p. m., adjourned to meet on May 26th, 1903, at 10.30 a. m.

1663 NEW YORK CITY, *June 8th, 1903—10.30 a. m.*

The CHAIRMAN. Well, gentlemen, are you ready to proceed?

Mr. SHEARN. I will call Mr. Olyphant.

R. M. OLYPHANT, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Olyphant, you have been for a great many years president of the Delaware & Hudson Company?

Mr. OLYPHANT. Yes, sir.

Mr. SHEARN. And only resigned with' a fortnight or so?

Mr. OLYPHANT. About a month ago.

Mr. SHEARN. The Delaware & Hudson Company owns and operates coal mines, does it not, in the anthracite regions in Pennsylvania?

Mr. OLYPHANT. They do.

Mr. SHEARN. As I understand it, the Delaware & Hudson Company is permitted and authorized by its charter to engage in the business of operating coal mines?

Mr. OLYPHANT. They are.

Mr. SHEARN. And consequently they do not need to operate by means of any subsidiary company?

1664 Mr. OLYPHANT. I do not know what you mean by a "subsidiary company." They are authorized to operate coal mines.

Mr. SHEARN. You do not operate by means of any subsidiary company, the capital stock of which the Delaware & Hudson Company owns? You operate your mines by direct ownership, do you not?

Mr. OLYPHANT. Yes.

Mr. SHEARN. Where are the mines of the Delaware & Hudson Company principally located?

Mr. OLYPHANT. In the Wyoming Valley.

Mr. SHEARN. That is the northern field?

Mr. OLYPHANT. The middle field.

Mr. SHEARN. What are the principal markets for the anthracite coal of the Delaware & Hudson Company?

Mr. OLYPHANT. It is very extensive in its range. Do you mean which are the special markets?

Mr. SHEARN. Yes, sir.

Mr. OLYPHANT. We operate in the Eastern States principally.

Mr. SHEARN. New England is a large market for your coal, is it not?

1665 Mr. OLYPHANT. Yes, sir.

Mr. SHEARN. Do you know about what proportion of the area of unmined anthracite is owned by the Delaware & Hudson Company?

Mr. OLYPHANT. They own some 12,000 acres, I think.

Mr. SHEARN. Do you know what percentage of the total area of unmined anthracite that 12,000 acres would amount to?

Mr. OLYPHANT. I suppose our production is nearly ten per cent of the total.

Mr. SHEARN. And about what is your average tonnage carried of anthracite coal per year?

Mr. OLYPHANT. Well, it increases year by year. I think it is about five million tons.

Mr. SHEARN. That five million tons is the output, is it not?

Mr. OLYPHANT. Yes; it may be a little larger than that.

Mr. SHEARN. It has been increasing largely from year to year, has it not?

Mr. OLYPHANT. It has.

1666 Mr. SHEARN. In your business of transporting anthracite coal, do you charge up in your books the published tariff to the various points?

Mr. OLYPHANT. We have no individual coal to speak of. We carry generally our own coal.

Mr. SHEARN. Do you keep in your books an account with a separate coal department and make charges up against that department for transportation?

Mr. OLYPHANT. Oh, yes; coal freight.

Mr. SHEARN. But it is a mere bookkeeping charge, as you own the coal you transport mostly?

Mr. OLYPHANT. Yes, sir.

Mr. SHEARN. You say you handle comparatively few shipments of coal for private operators——

Mr. OLYPHANT. I do not know that I said comparatively few. I do not think we have any.

Mr. SHEARN. What have you ascertained the cost per ton of mining anthracite coal to amount to in the last few years?

Mr. OLYPHANT. What it costs now or what it has cost in the past?

Mr. SHEARN. What it has cost up to, say, January of this year?

Mr. OLYPHANT. Well, that is hard work to tell. We were not mining much last year.

1667 Mr. SHEARN. Well, take the last full year you had. Take 1901; what did you find was the cost of mining anthracite coal per ton?

Mr. OLYPHANT. I do not recollect exactly. I think somewhere near $1.40 or $1.45. I do not know what it is now. It is much higher.

Mr. SHEARN. What have you found the cost of mining anthracite coal per ton to be during the months that mining has been resumed since the end of the strike?

Mr. OLYPHANT. I think it is about $1.70 now.

Mr. SHEARN. Has the price of Delaware & Hudson Company coal been advancing ten cents a month since the 1st of April of this year?

Mr. OLYPHANT. Well, I hope so. It has not been more than it ought to be.

Mr. SHEARN. What is the fact?

Mr. OLYPHANT. I expect it has—I presume it has.

Mr. SHEARN. Well, you have decided to advance the price of coal?

Mr. OLYPHANT. Yes, sir.

1668 Mr. SHEARN. And up to what point had you determined to advance it?

Mr. OLYPHANT. Let me go back a little. About fifteen years ago I brought forward the present plan as one that would prevent the trouble we have in stopping production for the benefit of the trade and public. It was at that time scouted—no use—humbug. I brought that forward about four years and it was given up year by year. Later, wiser counsels prevailed and it is proving to the benefit of all parties, the trade, the people, and the miners, because, while we used to have no business whatever in the summer, therefore the business accumulated in the fall and we could hardly take care of it, and we had to stop production, and that created a great deal of trouble in many directions. That has all been removed, and I think the wisest thing the coal companies have ever done for the benefit of all interested has been this scale of advancing ten cents during the usually idle months. You can naturally see the reason of it.

Mr. SHEARN. We do. Now, the question I was addressing to

1669 you was, to what extent have you determined or had you determined up to the time of your resignation to advance the price of D. & H. coal during the five months succeeding the 1st of April?

Mr. OLYPHANT. I presume it will be advanced for five months at ten cents per ton.

Mr. SHEARN. That is, the total advance will be about fifty cents?

Mr. OLYPHANT. About fifty cents.

Mr. SHEARN. What reason is there for an advance of fifty cents a ton over the price of last year if you find that the cost has only increased thirty cents a ton?

Mr. OLYPHANT. I am not sure you are right in saying that the cost has increased only thirty cents a ton.

Mr. SHEARN. I was taking your own estimate.

Mr. OLYPHANT. Well, there are other things to be considered. The cost seems to be increasing all the time.

Mr. SHEARN. While on the 1st of April it was determined to advance the price fifty cents a ton——

Mr. OLYPHANT. When the month of May comes in I shall not be surprised if I am told that the cost of mining has been again increased.

1670 Mr. SHEARN. On the 1st of April it had been determined to advance the price of coal fifty cents a ton over that of April 1st of last year, and you have testified that the additional cost of mining coal consequent on the changed conditions, the award of the strike Commission, etc., was in your opinion about thirty cents a ton. What was the reason for the advance of fifty cents in the price if the advance in cost was thirty cents?

Mr. OLYPHANT. Because we still consider that coal is a very cheap commodity at that price. You may be aware that it is an article being removed. You dig a hole in the ground and that is all that is left.

Mr. SHEARN. Was the fact that you were depleting the coal lands taken into consideration in fixing on this advance of fifty cents a ton?

Mr. OLYPHANT. It certainly was.

Mr. SHEARN. But you were also depleting the coal lands at about this same proportion in April, 1902?

Mr. OLYPHANT. Yes.

Mr. SHEARN. And in 1901 and 1900?

1671 Mr. OLYPHANT. No, sir. I do not think the history of the world can show anything in the commercial side that has been conducted with such ignorant stupidity as the coal trade, in reference to its necessity, its usefulness, and its limited supply, and it ought to be a great deal more than five dollars.

Mr. SHEARN. Well, why?

Mr. OLYPHANT. Because we want something left when we get through with the coal more than a hole in the ground. That is pretty much all there is of it.

Mr. SHEARN. What do you consider a proper price for coal, domestic sizes, would be?

Mr. OLYPHANT. Well, I think five dollars is a very moderate charge for coal. You must bear in mind that a great deal of coal does not bring five dollars.

Mr. SHEARN. Well, what proportion of your output consists of prepared sizes—domestic sizes?

Mr. OLYPHANT. Well, I suppose that would run from fifty to sixty-five per cent. It may be more than that, but I can not tell exactly.

Mr. SHEARN. Well, your company was making money, was it not, out of this business back when coal was four dollars a ton and $3.50 a ton?

1672 Mr. OLYPHANT. I do not think the condition of the coal supply was taken into account.

Mr. SHEARN. But, on the cost of production, measured by what you got for your coal, you were making money, were you not, when coal sold at $4 a ton?

Mr. OLYPHANT. I say if you take into account what is behind in reference to coal lands—I should say not.

Mr. SHEARN. Well, on the operation itself, though, considering the cost of production and cost of selling, and considering what you got for your coal, you were making money, were you not, when coal sold at $4 a ton?

Mr. OLYPHANT. We were making hardly a fair return.

Mr. SHEARN. Hardly what you considered a fair return?

Mr. OLYPHANT. We do not consider, in a business like this, when you make five or six or seven per cent, that it is a fair return.

Mr. SHEARN. Will you kindly tell me whether or not it is a

1673 fact that when coal was $4 a ton your company was making money in the business of mining and selling coal?

Mr. OLYPHANT. Yes; if you do not consider depletion of the coal lands.

Mr. SHEARN. Now, in order to meet that depletion you put aside every year five cents a ton?

Mr. OLYPHANT. We have done so for some time.

Mr. SHEARN. And are still doing it?

Mr. OLYPHANT. Yes, sir.

Mr. SHEARN. That is to meet this objection you have made that you are using up your capital, your assets?

Mr. OLYPHANT. It is designed to meet it, but I do not think it does.

Mr. SHEARN. Well, your company has been paying dividends year in and year out, has it not, for a great many years past?

Mr. OLYPHANT. It has for a number of years past.

Mr. SHEARN. Do you recollect what its dividend was last year?

Mr. OLYPHANT. I think it was seven per cent.

1674 Mr. SHEARN. And has that been about the prevailing rate of dividend for some years past?

Mr. OLYPHANT. For several years it was five and six.

Mr. SHEARN. Now, coming back to the original question, is there any other reason than that you have given why you in April, 1903, determined to advance the price of coal fifty cents a ton, when the increased cost of production was only thirty cents a ton?

Mr. OLYPHANT. Because we have to take into consideration what may occur, and, as I told you, $5 is a very low price for coal. If you go to the mines and examine and see what has to be done and how the supply is being diminished, and if you were in the position of being in charge of a coal company you would think it was an unreasonably small compensation.

Mr. SHEARN. Well, nothing had happened—nothing had changed in those rates since April, 1902, or April, 1901, except that the cost of mining had been increased by the award of the Strike Commission. Is not that correct?

Mr. OLYPHANT. I am not sure that it has not been increased by other causes. The devilishness of the miners is a great increase of cost.

1675 Mr. SHEARN. The devilishness of the miners?

Mr. OLYPHANT. Yes; I mean by that their refusal to work as they ought to work. The result of the award of the Commission and the whole business connected with it has made them feel that they are in charge of the mines.

Mr. SHEARN. Do you know what part of the cost of mining coal, to wit, $1.70 is made up of the wage element?

Mr. OLYPHANT. It is a very large proportion. I can not tell you exactly at the moment.

Mr. SHEARN. Well, is it more than half?

Mr. OLYPHANT. I should say so.

Mr. SHEARN. Do you think it as much as sixty per cent?

Mr. OLYPHANT. I tell you I have not the figures with me, and I do not want to answer things that I do not know positively about.

Mr. SHEARN. Who decided for your company that the price of coal should go up fifty cents a ton on April 1st of this year?

Mr. OLYPHANT. Well, I presume I did.

1676 Mr. SHEARN. And when you came to that conclusion you took into account, I suppose, the increased price in wages and all those other things you have spoken of and had these percentages and figures in your mind?

Mr. OLYPHANT. I do not think I did. I took the total as it was. I say we could get more than $5 a ton now, the demand is such; but we have endeavored to be conservative in that respect.

Mr. SHEARN. Well, when you made your decision to make this advance, did you know that the Reading was also going to advance its coal fifty cents a ton?

Mr. OLYPHANT. I think they published that fact.

Mr. SHEARN. They published it on April 1st, did they not?

Mr. OLYPHANT. I presume they did—about that.

Mr. SHEARN. Did you know that the Reading was going to advance coal fifty cents a ton when you decided to advance your coal fifty cents a ton?

Mr. OLYPHANT. I think the general course has been for the Reading, it being the largest company, to put out its price and all the others have to do is to follow.

Mr. SHEARN. But that is not what fixed your price, as I under-
1677 stand, because you said you made this advance because you found it would cost you thirty cents more——

Mr. OLYPHANT. No, sir; I did not say anything of the kind.

Mr. SHEARN. What was the reason?

Mr. OLYPHANT. The reason is that we can get it and can get more if we wish, too.

Mr. SHEARN. Because you can get it?

Mr. OLYPHANT. Yes, sir; do not say that I said things that I did not. That is one of those little catches——

Mr. SHEARN. I have no desire to catch you.

Mr. OLYPHANT. I do not mean to have you say that I said what I have not said at all.

Mr. SHEARN. Then, I will ask you again so that there will be no doubt about it. What was the reason for your advance in the price of coal fifty cents a ton on April 1st, 1903?

Mr. OLYPHANT. Because we thought it was worth it, and if we chose to do it we could get more for it any time. Dealers are urging us to let them have coal.

Mr. SHEARN. You increased the price, then, because you thought you could get it?

1678 Mr. OLYPHANT. We thought it was worth it to the public and to the dealers, and that it was demanded by the necessities of the coal area.

Mr. SHEARN. Well, there had not been any diminution in the available coal supply, had there, at the time of this advance—there had been no material and sudden diminution in the coal supply, had there?

Mr. OLYPHANT. Why, no; but there was a great diminution of the amount of coal available, owing to the strike and owing to the number of months there was none mined.

Mr. SHEARN. Then, as I understand it, the increase of thirty cents a ton in the cost of mining is not what determined the advance of fifty cents a ton in your price?

Mr. OLYPHANT. I have endeavored to make you understand that I do not think it had anything in the world to do with it.

Mr. SHEARN. And instead of your fixing the price or governing the price according to the supply and demand, you fix such a price
1679 as you think you can get for your product?

Mr. CAMPBELL. I object to this argument with the witness. That is directly contrary to what has been said by him. He said it was on acount of the demand, because of the demand, because he could get it.

Mr. OLYPHANT. The object of the last six months has been to keep down the price of coal.

Mr. SHEARN. What have you done?

Mr. OLYPHANT. The coal companies fixed their price at $5, and never deviated from that price when we could have gotten eight or nine or ten.

Mr. SHEARN. How did you come to do that? How was it that this common price of $5 a ton was maintained by the companies when the market price was $8 or $9?

Mr. OLYPHANT. It was because of consideration for the public that we desired to serve decently.

Mr. SHEARN. With whom did you confer when you decided to keep the price at $5 a ton when the market price was much higher?

Mr. OLYPHANT. There was no conference about it.

1680 Mr. SHEARN. With whom did you discuss the matter before you came to that conclusion?

Mr. OLYPHANT. I think at a meeting—not held with reference to that matter, but one necessitated by the conditions of the strike. It was a casual remark made by a president of a coal company, I forget now who—"Well, don't let us put the price above $5 to the public, anyhow," and everybody said, that is right; and we went off with that idea. There was no more conference than that about it.

Mr. SHEARN. Where was this meeting held?

Mr. OLYPHANT. Those meetings were held sometimes at my office and sometimes at the offices of the others. It was not, however, with reference to the price of coal. At no meeting that I have attended for a long time have I heard the price of coal discussed.

Mr. SHEARN. Do you recollect who were present, Mr. Olyphant?

Mr. OLYPHANT. I think the presidents of the roads——

Mr. SHEARN. Mr. Baer was there, was he not?

Mr. OLYPHANT. And outside coal operators and others.

Mr. SHEARN. Was Mr. Baer there?

Mr. OLYPHANT. I hope so; he is a pleasant fellow.

1681 Mr. SHEARN. What is your recollection as to whether Mr. Baer was there?

Mr. OLYPHANT. I think probably he was.

Mr. SHEARN. And President Thomas—do you recollect whether he was there?

Mr. OLYPHANT. Yes, sir; I just told you I thought they were all there.

Mr. SHEARN. Do you recollect who it was that made the suggestion at that meeting?

Mr. OLYPHANT. I told you I did not. I think I was going out the door at the time.

Mr. SHEARN. Then, it was a mere casual remark, made as you were going out the door that settled what the price of coal was going to be?

M. OLYPHANT. Yes, sir. I am sure the public were very much obliged to us for doing it.

Mr. SHEARN. It has been your custom, has it not, to endeavor to fix upon the price of coal for the ensuing year early in the spring of each year, so that the trade may know what to expect?

Mr. MOOT. One minute. Of course this testimony is offered as to all of the defendants. I have sat here for a half hour listening to it.

1682 It is nothing but a discussion of the price of coal. The question is up for this Commission and has not been ruled on—it is impor-

tant that it should be ruled upon—whether this is a general investigation or a trial of the charges filed by Mr. Hearst, and I desire now very much, inasmuch as this case comes up before the court the day after to-morrow, to have the ruling of this Commission. I fail to find any ruling as to whether a case of this kind was a general investigation where everything could be asked and answered, or whether you were confined to the issues brought forward by the complainant and the answers filed. I object to this line of testimony and respectfully ask that this Commission put itself on record on this question one way or the other, so that the court may know and counsel may know whether the Commission in a case of this kind claims the power to conduct a general investigation not limited by the pleadings before it. I think that counsel at this time, after all these days and with hundreds of pages of testimony piled up—almost entirely touching the price of coal—have the right to ask this of the Commission.

1683 The CHAIRMAN. Mr. Shearn, will you repeat the last question or will you ask another, as you prefer.

Mr. SHEARN. I will ask the stenographer to repeat the question.

(The stenographer repeated the question as follows:

"It has been your custom, has it not, to endeavor to fix upon the price of coal for the ensuing year early in the spring of each year, so that the trade may know what to expect.")

Mr. SHEARN. I shall press this question, and it seems to me there is no occasion for counsel to call upon this Commission to go on record for the purpose of any argument that is to be made outside of this Commission. We have had this same question up. It has been ruled upon again and again, and the Commission have very plainly intimated to counsel that it had from time immemorial considered the price of an article as one of the elements to be considered in determining the reasonableness of a rate. Now, if that high price is an artificially high price and one made by the companies themselves and not by trade conditions, not by the demand, the Commission ought to know it.

1684 Mr. CAMPBELL. I want to say to the Commission that you have ruled—and very correctly—not only in this case, but in every one else where the question was as to the reasonableness of a rate, that the value of the article is an element to be taken into consideration. To the extent that it is necessary to determine the value, that is all right. But this is a thing that everybody knows about. It is not a thing to be debated and drawn out of every witness brought on this stand. I protest positively against this course of examination as being in violation of every rule of judicial inquiry. This counsel and his client are possessed of a vagrant and delusive hallucination about the unreasonableness of this rate and the price of coal, and about the method of making the price of coal, and there is no reason why he should be permitted to go on here with what is called in the books "a fishing examination." There is no reason why he should be permitted to make an inquisitorial examination in respect to the private business of these people to aid this Commission.

1685 This Commission know now as well as they will if they call a thousand witnesses that the price of coal to-day is, approximately, $5 a ton; that it could be $8 or $10 if the operators demanded that price. All this is before the Commission now, and I object to going further with it.

Mr. MOOT. I would like to make my objection perfectly clear. I object to the question asked and to this line of questions as to how he supposed the price was fixed, why it was fixed so years ago, on the ground that it is not permitted for this Commission, under the act of Congress, to go into those matters, and upon the ground that they are confined to transportation rates, and whether they are reasonable or unreasonable, or whether they discriminate unduly. I object further on the ground that pleadings have been framed in this case to which this Commission is confined by a fair construction of the act to regulate *Congress*. Without arguing it, I respectfully suggest that I can not find in any reported opinion of the Commission, or in anything the Commission has said in the thirteen hundred and odd pages, that the Commission has excluded testimony of this character or ruled that it is incompetent.

1686 While I think that the course of the Commission indicates that you understand you have the right to investigate broadly, but I do not understand that you have so ruled. I think, as that question is to come up on Wednesday, that in fairness to counsel the Commission ought to declare itself unequivocally one way or the other, so that the court may be informed officially and not have to go through all the testimony or look through the reports of the Commission. I am not going to argue that, but ask the Commission in the most respectful manner and as being due to the court to pass upon this question. I am going to ask you in the most respectful manner to pass upon it one way or the other, either now or after you have had time to confer about it. I am not insisting that it be done on the spur of the moment, because I understand the importance of it, but I do think that counsel have the right to ask it after being here a number of days at the expense of their clients trying a lot of irrelevant questions. I think under those circumstances we have the right to know what you claim your power is and what you claim are the limits upon it in this proceeding.

The CHAIRMAN. Mr. Shearn, will you kindly repeat the question or propound the one you desire answered?

(The question was again repeated by the stenographer.)

1687 Mr. SHEARN. Early in each year, Mr. Olyphant, for two, or three, or four years past, you have determined upon the price that you were going to charge for your company's coal for the ensuing year so far as it lay in your power to do so, have you not?

Mr. MOOT. I renew my objection to that question.

Mr. CAMPBELL. I renew my objection.

The CHAIRMAN. We do not perceive that this question is essentially difference from the questions asked at the previous hearing, where the Commission ruled that they should be required to answer, and that question is now before the court. Counsel for respondents can not expect us to make a contrary ruling to-day.

Mr. MOOT. The question, if before the court, if your honor please, on your petition, whether you are an investigating body or whether you are inclined to treat with the issues; it is very important for the court and counsel to know what the position of this Commission is. I have searched through your written rulings in vain to find a case here or elsewhere where you have sustained an objection of this character on the ground on which it is now put, and I put this because I think the court

has a right to know from this body officially whether you claim that you are entitled to go beyond the issues laid before you by these pleadings and take evidence of this character as to price and investigate for days as to how prices are fixed, or whether you acknowledge that what you are really trying here is whether these rates are unreasonable or whether there has been discrimination or not.

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The CHAIRMAN. Our ruling has been that under the circumstances of the case and the issues, the price at which coal is sold and the manner in which that price is fixed was relevant to the issue of the reasonableness of the rates charged for carrying it. It does not seem to me that we are called upon to say whether we are conducting a general inquiry or simply hearing the complaint filed in this case.

Mr. SHEARN. Counsel inadvertantly disclosed what he wanted when he said he wanted some kind of an acknowledgment. He wants to have you make a hasty ruling here on the spur of the moment, take it before somebody else, and argue against the validity of the petition you have made. You have ruled in every case where you have been called upon that the testimony was either material or immaterial, relevant or irrelevant, to the matter that was pending before you.

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Mr. MOOT. Now, with all deference to the counsel, that question is squarely up here now, because this testimony can not be relevant or material to the reasonableness of the rate, or as to whether there is discrimination—as to when they fixed the price, what their custom has been; that is the kind of inquiry we have been listening to this morning. Now, that being so, I make my objection, and I observe the Commission makes no ruling on it. The counsel says it has ruled all the while whether it is relevant or irrelevant. I say in thirteen hundred pages you can not find a case where you have ruled out testimony *is* irrelevant. I do not know of any case where you have ruled out testimony as irrelevant. So I assume that the theory of this Commission is that it has the right, where a complaint of this kind is laid before it, to investigate it generally, and I think that is the only construction that can be placed upon the rulings in this case. I have not asked you to rule hastily. I said expressly I did not ask that. I do not care when the ruling is made, so that it is made before we go before the court, but I think counsel and the court alike, in view of the importance of this inquiry and of the proceeding that is to be had at your instance on Wednesday, I think we are entitled to a square ruling on that question, because I think it is squarely presented. Of course, if the Commission won't give it, why then the court and counsel will have to spell out as best they can from the record what the position of the Commission is.

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Com'r CLEMENS. In this case it is shown that the railroad owns the coal mines, operates them, and sells the coal, and the question of what rate is paid depends on what they get for the coal. Doesn't it seem clear to you that the prices of the coal, the way in which it is sold, the way the price is fixed, has a direct bearing upon that rate and upon the question of whether there is a substantial division in this district?

Mr. MOOT. That is a perfectly fair question. I will answer, it does not. I will give my reasons briefly why. It appears from the testimony of this witness that this company has no independent operator on

its line. It mines and carries its own coal to market under a charter running back to '23. Now, the question is squarely up, as I have suggested to the Commission, whether under those circumstances a railroad company, starting in as a canal company to carry coal to market
1691 and finally becoming a railroad company carrying its coal to market, the question is squarely up, whether as an independent mine taking coal to market, whether this Commission has a right to take testimony by the hour from this witness under such circumstances, as to why and how they fixed the price, the selling price of their coal.

The CHAIRMAN. Is not that interstate freight?

Mr. MOOT. I think that is not. I think that if that is their situation, they carrying their own coal to market, I think that this Commission and Congress alike have no power whatever; I think neither the Constitution nor the act of Congress convey any power whatever, either to Congress or to this body, to pass on that question of price. That question is to be regulated by the States in which the coal is bought and sold.

Com'r PROUTY. Do you undertake to say that the freight gone across the State line will not become interstate commerce?

Mr. MOOT. I undertake to say, in the language of the very latest declaration of the United States Supreme Court, that they have not yet passed upon that question, but it looks to them that it was not.

1692 Mr. SHEARN. The court might be interested in knowing that the counsel who has just spoken, in addressing the attorney-general of this State, said it was preposterous and ridiculous to say that the State had anything to do with this matter, and that it was clearly a matter of interstate commerce, and that if he undertook to interfere in this matter he would bring his great office into disrepute.

Mr. MOOT. I have no doubt that counsel reports what I said as faithfully as his memory permits. What I said was—they were complaining about the prices of the independent merchants who were charging for coal in this city last winter when that was said—and I said that the prices charged by independent merchants for coal last winter, when they were charging from twenty to thirty dollars a ton after they had bought it and it had been brought in this city, that it was entirely within the control of the authorities of the State of New York, and I said their complaint should have been filed against those parties rather than the railroad companies that were selling at par. I said then, and it is my position, and I say now, that the question of whether the rates
1693 for carrying coal from Pennsylvania to this city for other people—for other people—are reasonable and just, discriminated or not—is squarely within the jurisdiction of this Commission and of Congress and of the Constitution of the United States, and I have not hedged or dodged on that question at all.

The CHAIRMAN. The Commission is constrained to overrule the objection on the ground that the evidence is competent and relevant to the issues in this case.

(The question was then repeated by the stenographer.)

Mr. OLYPHANT. I wish to state one thing: you are very careful about increasing the price of coal, but you have not asked why we put it down on the 1st of April 50 cents, to $4.50, showing you that for five months

at least the price has not been $5.00, making the average for the year decidedly below $5, and perhaps your 30 cents that you talk of would be found to be perhaps a little——

Mr. SHEARN. So that I won't forget it, I will ask that now. Why did you on the 1st of April put it down 50 cents?

Mr. OLYPHANT. I have told you once that that was done with
1694 a view to helping the public, to helping the trade, and doing away with a certain amount of waste of coal that might be caused by endeavoring to bring coal in in the months when there was no demand for it.

Mr. SHEARN. Oh, you are referring to the plan that you originated years ago for a cheaper price in the summer than in the fall?

Mr. OLYPHANT. I believe that five months of that kind has a direct bearing on the price of coal. I want to lay that price before you. You talk about $5 and a difference of 30 cents. It is not $5, and there is not a difference of 30 cents which you assume.

Mr. SHEARN. But there will be if you are able to work the price up, as Mr. Baer said, to $5.

Mr. OLYPHANT. If there is a demand for it of course we will.

Mr. SHEARN. Now, coming back to the question——

Mr. OLYPHANT. And we put the price down so that there may be a demand during those months. If the party whom you represent here could carry out his views as indicated in his paper, a large part of the product of the anthracite mines would have to be carried down to Sandy Hook and deposited there in order to get a chance to get back to the mines.

1695 Mr. SHEARN. Well, I do not quite follow that.

Mr. OLYPHANT. You have got to produce as much as possible all the time, whether you have got a market for it or not, and I say there would be no market and the only outlet would be Sandy Hook.

Mr. SHEARN. There is not any doubt in your mind that there would be a market if the price were lower, is there?

Mr. OLYPHANT. Yes, sir; coal is not a speculative article at all. It don't make any difference as to the price. When the coal dealer's yard is full he can not buy any more if the price is——

Mr. SHEARN. Then you do not think it makes any difference in the demand for coal whether the price is high or the price is low?

Mr. OLYPHANT. You might stock up, that is all, but there is no speculation at all; it is absolutely an unspeculative article.

Mr. SHEARN. Now, to resume. You do endeavor, do you not, early in the spring of each year, to fix upon the price that you are going to charge for your coal for the ensuing year?

1696 Mr. OLYPHANT. I have endeavored while I was in charge to conduct the business on a fair commercial basis, both to the public and to the parties whom I am directly interested in, and all this talk about this, that, and the other has no more to do with it than the man in the moon. It appears to me that you are taking a course which is entirely unnecessary. I have told you all I know, and you might ask me from now to doomsday and I could not tell you any more. Besides that, you promised me if I came up here you would not detain me more than five minutes, and I told you I was going away and had a great deal to attend to.

Mr. SHEARN. That is to the point. The other suggestion I would take with better grace from the Commission and not from the witness. If you will answer the question and come right down to the point I won't keep you more than a few minutes. Now, will you please tell this Commission whether you do, early in the spring of each year, endeavor to fix upon the price you are going to charge for your company's coal?

Mr. OLYPHANT. I have not got anything to do with it.

Mr. SHEARN. But did you when you were president?

Mr. OLYPHANT. Well, I am not going back.

1697 Mr. SHEARN. You won't go back?

Mr. OLYPHANT. No.

Mr. SHEARN. Won't you go back if the Commission requests you?

Mr. OLYPHANT. I would, unless it is positive and decided that it is an absurd question of itself.

Mr. SHEARN. Now, will the Commission—very well, I won't press you, sir. Mr. Olyphant [handing paper], will you please look at this paper and state whether you recognize it as a contract between the Delaware & Hudson Company and the Hillside Coal & Iron Company under date of June 30th, 1902? Kindly look at it.

Mr. OLYPHANT. I do not know whether it is or not. It may have been rep'inted. I can not go through it.

Mr. OPDYKE. Before this goes to the witness I would like to see it, Mr. Shearn [examining paper]. It don't purport to be an original contract. You asked whether it was a contract; it is a printed paper and not an original.

Mr. SHEARN. Yes; unfortunately, we have not the original. Will you please look at this printed contract I show you?

Mr. OLYPHANT. I do not care to look at it.

1698 Mr. SHEARN. Will you look at it, or won't you?

Mr. OLYPHANT. No; I won't look at it, because it has nothing to do with the Commission.

Mr. SHEARN. I ask the Commission to direct the witness to look at the contract.

The CHAIRMAN. For what purpose?

Mr. SHEARN. Because I am going to put it in evidence.

Mr. OPDYKE. Not yet. It appears to be a printed paper, not purporting to be a paper executed by anyone. It can not be offered in evidence. If the object is to ask the witness whether it is a copy or not, the original must be shown to the witness.

The CHAIRMAN. Why is not that so, Mr. Shearn?

Mr. SHEARN. The originals, if the court please, they have refused to produce.

Mr. OPDYKE. We have not been asked to produce it.

Mr. MOOT. The Delaware & Hudson has not been asked to produce it.

1699 Mr. SHEARN. If the court will bear with me a moment——

The CHAIRMAN. It seems to us very plain that the question should be withdrawn until it is decided by the court whether we are right in requiring the originals to be produced.

Mr. SHEARN. It seems to me when you have the witness here who knows this is a copy——

Mr. OLYPHANT. I do not know anything at all about it. I can not carry all those things in my mind.

The CHAIRMAN. Suppose he said it was. That would not advance the matter at all if he recognized it as a copy.

Mr. SHEARN. It seems to me it would, because then you would receive it in evidence, because it is the best evidence, as it is available; it is a true copy and the original is withheld.

The CHAIRMAN. No, Mr. Shearn; we do not allow it.

Mr. SHEARN. In June of last year, Mr. Olyphant, you entered into a contract, did you not, with the Hillside Coal & Iron Company and the Erie Railroad providing for the sale of your coal that was destined to this particular point, tide water?

A. No, sir; we did not.

1700 Mr. OPDYKE. This is an attempt to get in the contents of a written instrument by oral testimony. It is attempting to prove by the memory of the witness, which is necessarily imperfect, the contents of a written instrument.

The CHAIRMAN. We understand he can simply say enough about it to identify it in the mind of the witness. He simply wants to know when such a contract was made.

Mr. OPDYKE. If the question had stopped as to when he made the contract; the counsel went on to describe——

Mr. OLYPHANT. I have no such contract made of the kind stated by Mr. Shearn.

Mr. SHEARN. Wasn't there a contract made in June, 1902, between the Delaware & Hudson Company and the Hillside Coal & Iron Company for the sale by your company to that company of anthracite coal?

Mr. OLYPHANT. That is different what you ask me.

Mr. SHEARN. Please answer that question.

Mr. OLYPHANT. We sell to anybody that comes forward to buy it.

Mr. SHEARN. Wasn't there a contract made in June, 1902,

1701 between the Delaware & Hudson Company and the Hillside Coal & Iron Company for the sale by your company to that company of anthracite coal destined for New York?

Mr. OLYPHANT. There are any quantity of contracts for sales of coal for New York.

Mr. SHEARN. Was there a contract——

Mr. OLYPHANT. There was, I tell you, and many others; it is our habit when we sell coal to make a contract.

Mr. SHEARN. Was that contract for the sale to them of all your coal that was destined to this tide-water point?

Mr. OPDYKE. I object, and repeat the same objection; he is getting the contents of a written contract by oral testimony.

The CHAIRMAN. The objection seems to be well taken, Mr. Shearn.

Mr. SHEARN. Did you enter into a contract in June, 1902, with the Hillside Coal & Iron Company that provided that at any time coal bought below $3.50 at tide water your company should have the privilege of stopping your mines?

Mr. OLYPHANT. I should think that comes under the same decision of the court.

Mr. OPDYKE. I make the same objection.

1702 The CHAIRMAN. That objection will have to be sustained.

Mr. SHEARN. Do you know, Mr. Olyphant, what the cost per ton is of bringing your coal from your mines to the gathering point at Carbondale or Homesdale?

Mr. OLYPHANT. I do not think that question is proper under this ruling.

Mr. SHEARN. This witness makes the objection that this question is not proper.

Mr. OLYPHANT. You are just speaking of that paper——

Mr. SHEARN. Oh, it has nothing to do with this paper. We have had frequent allusion to the cost of bringing coal to the gathering point before it is shipped as a reason for their charging more for anthracite than for bituminous. Now, I ask the witness if he knows whether the cost of bringing the D. & H. coal from their mines along though laterals to these two great gathering points of Carbondale and Homesdale amounts to about 25 cents a ton. I ask him if he knows that as the fact?

The CHAIRMAN. Ask him if he knows what it does cost.

Mr. SHEARN. Do you know what it does cost?

Mr. OLYPHANT. No; I do not.

Mr. SHEARN. Do you know approximately what it costs?

1703 Mr. OLYPHANT. Well, I might make a mistake. I don't want to go into an approximation.

Mr. SHEARN. Haven't you in contracts for the sale of as much as 800,000 tons of anthracite a year stipulated that you should receive 25 cents a ton for bringing the coal to the gathering points?

Mr. OPDYKE. That comes under my former objection.

The CHAIRMAN. Same ruling.

Mr. SHEARN. This is quite a different question. The witness says he does not remember.

The CHAIRMAN. You are questioning him with reference to his statement that he does not know the cost of bringing coal from the mines to the main track.

Mr. SHEARN. Yes. I want to refresh his recollection by a suggestion.

Mr. OLYPHANT. Well, you can not refresh it; I don't know.

Mr. SHEARN. Well, if you won't permit me to, I can not.

Mr. OLYPHANT. Well, I do not know. There is no refreshing about that.

1704 Mr. SHEARN. Well, but your output you say is about five million tons. Now, if you have made any contracts for the sale of as much as one-fifth of that product, of that output of 800,000 to one million tons a year, and have included in those contracts a stipulation that you should be paid 25 cents a ton for bringing the coal to the gathering point, you would probably remember it?

Mr. OLYPHANT. I have not said that we do make such a stipulation.

Mr. SHEARN. Don't you know that you have, Mr. Olyphant?

The CHAIRMAN. That would neither prove that he knew what it cost nor prove what it did cost.

Mr. SHEARN. Haven't you any idea what it costs you year in and year out to bring your coal to the gathering point from your mines?

Mr. OLYPHANT. There are a great many gathering points.

Mr. SHEARN. To Carbondale and Homesdale?

Mr. OLYPHANT. I do not know what it costs.

Mr. SHEARN. You were one of the directors of the Temple Iron Company, were you not, in 1899?

Mr. OLYPHANT. I was for a short time; yes, sir.

1705 Mr. OPDYKE. In what year?

Mr. OLYPHANT. On, not in 1899.

Mr. SHEARN. Were you in 1900?

Mr. OLYPHANT. I think it was 1902. It may have been 1901. I am not positive. I took so little interest in it I have not a clear idea. I am inclined to think it was 1901.

Mr. SHEARN. Was your company asked to become a party to the Temple Iron Company guaranty agreements?

Mr. OLYPHANT. I was not.

Mr. SHEARN. Do you recollect the proposal for the building of the Delaware Valley & Kingston Railroad along the line of the old Delaware & Hudson Canal Company?

Mr. OLYPHANT. I know there was such a proposition made, and a good deal of talk about it.

Mr. SHEARN. Did you employ counsel to oppose the granting of the character of the Delaware Valley & Kingston before the New York State railroad commission?

Mr. OPDYKE. That seems to me to be entirely irrelevant and immaterial to any issues here.

Mr. SHEARN. Counsel was not here when Mr. Thomas testified and of course he does not appreciate the bearing of the question.

1706 Mr. CAMPBELL. Nobody else can appreciate any legitimate bearing of it.

Mr. OPDYKE. I do not see any relevancy it has.

Mr. MOOT. I will make the same objection that I made before to this testimony.

Mr. SHEARN. Question withdrawn.

Com'r PROUTY. Do you sell the coal at the mines or do you sell it direct?

Mr. OLYPHANT. We have some coal sold at the mines, and we sell generally outside.

Com'r PROUTY. At delivered price?

Mr. OLYPHANT. At delivered price. I do not think the stenographer took down what I said when I said that I thought that had a direct bearing upon the question that was propounded to me about $5.30; that the price was not $5 for the year; that it was $4.50 per ton part of the time, ascending to $5.00, and that if there was only a difference of 30 cents between the cost and the price of $5.00 that, with some other things that we alluded to, would be entirely eliminated in that way.

1707 Mr. SHEARN. That is all, Mr. Olyphant. I will ask the secretary if he has received from Mr. Jermyn the coal-purchase contract which Mr. Jermyn promised to produce?

The SECRETARY. Yes, I have.

Mr. SHEARN. Will you kindly hand it to me.

(Paper handed to Mr. Shearn.)

1708 W. W. RULEY recalled:

Mr. SHEARN. Mr. Ruley, have you prepared the data relative to the average price of coal at tide-water points during the years mentioned that you said you would prepare at the time of the last hearing?

Mr. RULEY. I have.

Mr. SHEARN. Will you produce it?

(Statement handed to counsel by witness.)

Mr. SHEARN. Now, these are the figures (referring to statement) that are made up from the report made to you by these various companies?

Mr. RULEY. Yes, sir.

Mr. SHEARN. And these are correct?

Mr. RULEY. Yes, sir.

Mr. SHEARN. I observe out in the left-hand margin the initials "P., R. C. & I. Co." That means Philadelphia, Reading Coal & Iron Company?

Mr. RULEY. Yes, sir.

Mr. SHEARN. And "L. V.?"

Mr. RULEY. Lehigh Valley.

Mr. SHEARN. And "L. & W. B.?"

Mr. RULEY. Lehigh & Wilkesbarre.

1709 Mr. SHEARN. Then "D., L. & W.?"

Mr. RULEY. D., L. & W. Railroad.

Mr. SHEARN. And "Penna. Coal?"

Mr. RULEY. Pennsylvania Coal Company.

Mr. SHEARN. And "Hillside C. & I.?"

Mr. RULEY. That is the Hillside Coal & Iron Company.

Mr. SHEARN. And "New York, O. & W.?"

Mr. RULEY. New York, Ontario & Western.

Mr. SHEARN. And "N. Y., S. & W.?"

Mr. RULEY. New York, Susquehanna & Western. You will find that those three companies—the Pennsylvania Coal Company, the Hillside Coal & Iron, and New York, Susquehanna & Western—in the later months are all reported as a single item instead of separately. That is the way they are reported to me.

Mr. SHEARN. And from whom do you receive the reports for those three companies?

Mr. RULEY. They come through the sales agents of the Hillside Coal & Iron Company.

Mr. SHEARN. They send you the reports in for those three companies?

1710 Mr. RULEY. Yes, sir.

Mr. SHEARN. In the top line are the words, lump, broken, egg, stove, chestnut, pea, and buckwheat 1, 2, and 3. Those are the sizes of the coal?

Mr. RULEY. Yes, sir; and then you will observe under each size the tons and average price given for each month for each company.

Mr. SHEARN. And those are the average prices, are they, that you report back to these various companies?

Mr. RULEY. We make a general average upon that.

Mr. SHEARN. You make a general average of all these prices of these companies?

Mr. RULEY. Yes, sir.

Mr. SHEARN. You do not report back to the Reading Coal & Iron Company the general average for its coal?

Mr. RULEY. No.

Mr. SHEARN. You report back to the other companies the general average for all these companies named in your schedules here?

Mr. RULEY. Yes, sir.

Mr. SHEARN. I offer this in evidence.

(The same is hereto attached and marked "Exhibit No. .")

Mr. SHEARN. That is all, Mr. Ruley.

1711 Mr. PROUTY. Do you know, Mr. Ruley, which of these sizes are domestic sizes and which are steam coal?

Mr. RULEY. Broken, egg, stove, and chestnut are ordinarily called domestic sizes. They are spoken of as prepared sizes. Pea coal is a domestic size in some localities. In Philadelphia it is used to a great extent there. I do not know just to what extent it is used here.

Mr. PROUTY. Now, those statistics only refer to sales at New York?

Mr. RULEY. In New York harbor.

Mr. BROWNELL. That includes what—"New York harbor?"

Mr. RULEY. That includes coal from Edgewater, on the north, to Perth Amboy, on the south.

Mr. BROWNELL. And includes all of the sales, month by month, of the different companies that are enumerated here?

Mr. RULEY. Yes, sir; all their f. o. b. coal.

Mr. BROWNELL. There are nine companies?

Mr. RULEY. Yes, sir.

1712 Mr. BROWNELL. The statement covers the period from January, 1901, down to——

Mr. RULEY. Down to April, inclusive, of this year.

Mr. BROWNELL. Both inclusive?

Mr. RULEY. Yes, sir.

Mr. BROWNELL. Referring to the schedule for the month of January, 1901, have you a copy of it?

Mr. RULEY. I have a carbon copy here.

Mr. BROWNELL. Refer to it, please. The prices here relate to what quality of coal—to white ash?

Mr. RULEY. To general qualities of coal—all coals sold f. o. b. here ordinarily known as white ash coal.

Mr. CAMPBELL. There are a half dozen other varieties not reported.

Mr. RULEY. Yes, sir; there are some special grades of coal, like Lykens Valley.

Mr. BROWNELL. Different qualities of coal, but of the sizes given here?

Mr. RULEY. Yes, sir.

Mr. BROWNELL. But those other qualities are not reported?

Mr. RULEY. No, sir.

1713 Mr. BROWNELL. And the selling prices of those qualities of coal vary from those given here?

Mr. RULEY. I presume they do. They are ordinarily reported in the market at a higher price, generally.

The CHAIRMAN. But the price at which those coals are sold is not taken into account in making up this average?

Mr. RULEY. No, sir.

Mr. BROWNELL. Referring to the selling price in the month of January, 1901, will you state whether the price of egg coal sold by any one company corresponds to the average price for the sales of the same size by any other company?

Mr. SHEARN. I object to that.

Mr. RULEY. Egg coal for January?

Mr. BROWNELL. Yes, sir.

Mr. RULEY. I do not see any; apparently not.

Mr. BROWNELL. What was the highest price of any company during that month?

Mr. RULEY. $4.55.

Mr. BROWNELL. What company?

Mr. RULEY. Lehigh Valley Coal Co.

1714 Mr. BROWNELL. The lowest was what?

Mr. RULEY. $3.77.

Mr. BROWNELL. What company was that?

Mr. RULEY. D., L. & W.

Mr. BROWNELL. And the other companies' coal sold at different prices, ranging from $3.77 to $4.55. Please refer to the selling price of stove coal during the same month. What was the highest?

Mr. RULEY. $4.67.

Mr. BROWNELL. The coal of what company was that?

Mr. RULEY. Of Coxe Brothers & Company.

Mr. BROWNELL. And what was the lowest for the same month?

Mr. RULEY. $4.40; the Pennsylvania Coal Company.

Mr. BROWNELL. Chestnut; what was the highest?

Mr. RULEY. $4.65; Coxe Bros.

Mr. BROWNELL. And the lowest?

Mr. RULEY. $4.40; Lehigh Valley Coal Company.

Mr. SHEARN. If this is for the information of the Commission, they ought to realize that these higher prices they are picking out are Coxe Bros., who are not a party to this case at all and not alleged to be

1715 members of this combination.

Mr. BROWNELL. Let me see if that is so. What did you say was the highest for egg coal?

Mr. RULEY. $4.55 for Lehigh Valley Coal Company.

Mr. BROWNELL. What was the selling price of Coxe Bros. during that month?

Mr. RULEY. $4.34.

Mr. BROWNELL. So the statement that Coxe Bros. was the highest would not be correct?

Mr. RULEY. Not for that month.

Mr. BROWNELL. Take stove coal. The highest, you say, was Coxe Bros.; $4.67. What is the next highest for that month?

Mr. RULEY. $4.48.

Mr. BROWNELL. And what company?

Mr. RULEY. Hillside Coal & Iron Company and the Ontario & Western both reported the same price.

Mr. BROWNELL. Now, take buckwheat No. 1. That is a size lower than the prepared sizes?

Mr. RULEY. It is the second size. Pea is not spoken of generally as a prepared size.

1716 Mr. BROWNELL. Take pea coal for that month?

Mr. RULEY. $2.94 is the highest for the New York, Susquehanna & Western, and the lowest, $2.41, the Lehigh Valley Coal Company.

Mr. BROWNELL. What was the selling price of Coxe Bros. coal during that month?

Mr. RULEY. $2.69.

Mr. BROWNELL. And all the other companies ranged between the maximum and minimum you have given?

Mr. RULEY. Yes, sir.

Mr. BROWNELL. Take egg coal during the month of February, 1901. Give us the range of prices and the company whose coal sold at the highest and lowest prices during that month.

Mr. RULEY. Egg, is that?

Mr. BROWNELL. Yes, sir.

Mr. RULEY. $4.23 for Coxe Bros.

Mr. BROWNELL. And next lower.

Mr. RULEY. $3.51, for the Hillside Coal & Iron Company.

Mr. BROWNELL. You mean, don't you, that that is the lowest?

1717 Mr. RULEY. Yes, sir; that is the lowest.

Mr. BROWNELL. What is the next lowest to Coxe Bros.?

Mr. RULEY. $4.16; Philadelphia, Reading, Coal & Iron.

Mr. BROWNELL. The Lehigh Valley was how much?

Mr. RULEY. $4.

Mr. BROWNELL. The Delaware, Lackawanna & Western was what?

Mr. RULEY. $3.69.

Mr. BROWNELL. L. & W. B.?

Mr. RULEY. Lehigh & Wilkesbarre, $3.95.

Mr. BROWNELL. New York, Ontario & Western?

Mr. RULEY. $3.75.

Mr. BROWNELL. Take stove coal during February, 1901. What was the price of Coxe Bros.?

Mr. RULEY. $4.61 for Coxe Bros.

Mr. BROWNELL. What was the Delaware, Lackawanna & Western?

Mr. RULEY. $4.39.

Mr. BROWNELL. What was the price for the Hillside Coal & Iron?

1718 Mr. RULEY. $4.40.

Mr. BROWNELL. And the L. & W. B.?

Mr. RULEY. $4.40.

Mr. BROWNELL. And the others varied between the two limits you have given?

Mr. RULEY. Yes, sir.

Mr. BROWNELL. Take chestnut during February, 1901. The highest reported was what?

Mr. RULEY. $4.61 for Coxe Bros.

Mr. BROWNELL. And the lowest?

Mr. RULEY. $4.38; Lehigh Valley Coal Company.

Mr. BROWNELL. What was the Ontario & Western?
Mr. RULEY. $4.50.
Mr. BROWNELL. What was the Lehigh Valley?
Mr. RULEY. $4.38.
Mr. BROWNELL. New York, Susquehanna & Western?
Mr. RULEY. $4.46.
Mr. BROWNELL. The Ontario & Western?
Mr. RULEY. $4.50.
Mr. BROWNELL. During the month of February, 1901. What was the range of prices for pea coal?

1719 Mr. RULEY. $2.85 was the highest, New York, Susquehanna & Western. $2.39 was the lowest, Lehigh & Wilkesbarre Coal Company.

Mr. BROWNELL. The selling price of coal by the other coal companies varied between $2.39 and $2.85?
Mr. RULEY. Yes, sir.
Mr. BROWNELL. Coxe Bros. being what?
Mr. RULEY. $2.74.
Mr. BROWNELL. Buckwheat No. 1, during that month—what was the range of selling prices?
Mr. RULEY. $2.27, the highest, Pennsylvania Coal Company.
Mr. BROWNELL. And the lowest was what?
Mr. RULEY. $1.82, the Lehigh Valley Coal Company.
Mr. BROWNELL. The Coxe Bros. coal sold for——
Mr. RULEY. $2.
Mr. BROWNELL. And the other companies varying as before, between the highest and lowest you have mentioned?
Mr. RULEY. Yes, sir.
Mr. BROWNELL. Take March, 1901——
The CHAIRMAN. Mr. Brownell, do you want to go over all of them?

1720 Mr. BROWNELL. No; but simply to show whether the coal was selling here month by month for the same price. The claim has been made here by counsel that such is the fact. He has called for this table and this seems to show the contrary, and we want to take this opportunity to give you the fact.

The CHAIRMAN. These tables show varying prices for coal.

Mr. BROWNELL. Yes, sir; and when counsel offered some exhibits at the beginning of this proceeding which were not received in evidence, but quoted from at great length—I don't want to go into this at the same length. These figures have been put in evidence on a vital point, and we ask that the Commission will give it consideration; but it is proper at this time that the matter be emphasized, and the facts pointed out to the Commission that in each month the variation has been very considerable between all the companies and all the different sizes of coal.

Com'r PROUTY. Take April, 1903.

Mr. BROWNELL. Bear in mind that during these last few months the demand for coal has been up to if not in excess of the ordinary supply, so that there would ordinarily follow more uniformity of price in

1721 coal from natural causes than at times when conditions are more nearly normal. Now, please state the price of egg coal for April, 1903.

Mr. RULEY. The highest was $4.65, Coxe Brothers; the lowest $4.45, Philadelphia & Reading Coal & Iron.

Mr. BROWNELL. What was the Hillside Coal & Iron selling price?

Mr. RULEY. $4.49.

Mr. BROWNELL. The New York, Ontario & Western?

Mr. RULEY. $4.46.

Mr. BROWNELL. Please refer to the selling price of broken coal.

Mr. RULEY. The highest price was $4.36, Coxe Brothers; the lowest $4.20, the Lehigh & Wilkesbarre Coal Company.

Mr. BROWNELL. What was the Delaware, Lackawanna & Western sales price during that month?

Mr. RULEY. $4.25.

Mr. BROWNELL. And the Hillside Coal & Iron Company?

Mr. RULEY. $4.22.

Mr. BROWNELL. Take stove coal; what was the range of prices?

MR. RULEY. $4.66 was the highest; $4.45 the lowest.

1722 Mr. BROWNELL. What was the Lehigh Valley?

Mr. RULEY. $4.50.

Mr. BROWNELL. Whose was the highest?

Mr. RULEY. Coxe Brothers & Company.

Mr. BROWNELL. And the lowest?

Mr. RULEY. The lowest was Philadelphia & Reading Coal & Iron Company.

Mr. BROWNELL. Chestnut?

Mr. RULEY. Coxe Brothers & Company was the highest—$4.66; the Philadelphia & Reading Coal & Iron Company, $4.45.

Mr. BROWNELL. What was the selling price of the Hillside coal?

Mr. RULEY. $4.48.

Mr. BROWNELL. And the rest varied between the two extremes?

Mr. RULEY. Yes, sir.

Mr. BROWNELL. Pea coal?

Mr. RULEY. Pea coal—the highest price was $3.00, for the D. L. & W., and the lowest price $2.77 for the Lehigh & Wilkesbarre Coal Company.

Mr. BROWNELL. What was Coxe Brothers' pea coal?

1723 Mr. RULEY. $2.85.

Mr. BROWNELL. Hillside Coal & Iron Company.

Mr. RULEY. $2.97.

Mr. BROWNELL. Buckwheat No. 1?

Mr. RULEY. The range varies from $2.50, D. L. & W., and also of the Hillside Coal & Iron, to $2.17 of Coxe Brothers.

Mr. BROWNELL. What was the range for buckwheat No. 1 in the month of March, 1903?

Mr. RULEY. $2.56 for the D. L. & W., and $2.13 for the Lehigh Valley Coal Company.

Mr. BROWNELL. And Coxe Brothers?

Mr. RULEY. $2.14.

Mr. BROWNELL. The Hillside Coal & Iron Company?

Mr. RULEY. $2.41.

Mr. BROWNELL. What was the range for pea during that month?

Mr. RULEY. $3.41, Ontario & Western.

Mr. BROWNELL. Down to what?

Mr. RULEY. Down to $2.91 for the Lehigh Valley Coal Company.

Mr. GOWEN. $2.75 for the Lehigh & Wilkesbarre.

Mr. RULEY. Yes; down to $2.75 for the Lehigh & Wilkesbarre.

1724 Mr. BROWNELL. A range of price from $2.75 to $3.41?

Mr. RULEY. Yes, sir.

The CHAIRMAN. That is presumably from the sale of the same quality, sold in the same market?

Mr. RULEY. Yes, sir.

Mr. BROWNELL. The average during the entire month?

Mr. RULEY. During that month—the month of March.

Mr. BROWNELL. What was the selling price of the Hillside pea coal during that month?

Mr. RULEY. $2.94.

Mr. BROWNELL. And during the same month what was the selling price of Coxe Brothers pea coal?

Mr. RULEY. $2.94.

Mr. BROWNELL. The same as the Hillside?

Mr. RULEY. The same as the Hillside for that month.

Mr. BROWNELL. What was the range for chestnut coal during that month?

Mr. RULEY. During March?

Mr. BROWNELL. March, 1903.

1725 Mr. RULEY. $5.17, Coxe Brothers, the highest; $4.95 for the Philadelphia & Reading Coal & Iron Company, the lowest.

Mr. BROWNELL. What was the Hillside during that month?

Mr. RULEY. $5, exactly.

Mr. BROWNELL. What was the range during March on stove coal?

Mr. RULEY. $5.05 for Coxe Brothers, $4.95 for Philadelphia & Reading Coal & Iron.

Mr. BROWNELL. And the Hillside coal?

Mr. RULEY. $4.99.

Mr. BROWNELL. What was the range on egg?

Mr. RULEY. $5.06 for the Lehigh Valley Coal Company and $4.95 for the Reading Coal & Iron Company.

Mr. BROWNELL. The Hillside Company?

Mr. RULEY. $4.99.

Mr. BROWNELL. And Coxe Brothers?

Mr. RULEY. $5.03.

Mr. BROWNELL. What was the range on broken?

Mr. RULEY. $4.03 for Ontario & Western and Coxe Brothers; they are both the same.

Mr. BROWNELL. $4.05 is what I have for Coxe Brothers.

1726 Mr. RULEY. Yes; that is correct.

Com'r PROUTY. Just what are these prices? Do you understand these are the prices at New York Harbor?

Mr. RULEY. Yes, sir.

Mr. PROUTY. Does it apply to coal sold in New York City as well as coal sold in New York Harbor and shipped to New York?

Mr. RULEY. Yes, sir; all coal that comes down here is sold on the f. o. b. basis, whether it goes to New York City or down the Sound or to

Massachusetts or anywhere. All coal is sold on the f. o. b. basis in New York Harbor.

Com'r PROUTY. Do you understand that all the companies charge the same price on coal delivered in New York City that they do on coal delivered on barge and taken to Boston, for instance?

Mr. RULEY. Do they charge the same price?

Mr. PROUTY. Yes, sir.

Mr. RULEY. Oh, no, sir.

Com'r PROUTY. And in making up the average price you would take the price actually received in New York City and sold here and the price before it went on the barge and put them together?

1727 Com'r PROUTY. No; I mean sold here in New York Harbor f. o. b. You say that the prices per ton would vary from the price charged for coal consumed in New York City?

Mr. RULEY. I misunderstood you on that.

Com'r PROUTY. You understand them to be the same?

Mr. RULEY. Yes, sir.

Com'r PROUTY. The freight rate is the same from the mine whether it goes to New York City or it goes into the barge.

Mr. CAMPBELL. There is no coal goes to New York City direct.

Mr. BROWNELL. The purchaser takes the coal at the harbor?

Mr. RULEY. Yes, sir.

Com'r PROUTY. Is there not a freight rate of $1.85 on coal destined to New York City and another freight rate of $1.55 on coal which is to be put on the barge and taken to New England point?

Mr. CAMPBELL. The general freight agent says not that he knows of.

1728 Com'r PROUTY. From examining the tariffs some time ago, my recollection was that there was a higher rate where coal was delivered in New York City than where it went beyond New York City by water.

Mr. CAMPBELL. No, sir; I think not.

Com'r PROUTY. You understand these prices would be the same no matter what the ultimate destination of the coal was to be?

Mr. RULEY. Yes, sir.

Mr. PROUTY. And the Reading would charge just as much for coal consumed in New York as for coal shipped on to Boston?

Mr. RULEY. It is limited to f. o. b.

Mr. CAMPBELL. The Boston coal is not shipped by New York. It is shipped by Port Richmond and stands on a wholly different basis.

Com'r PROUTY. Is not coal routed from New York Harbor, or any points called New York Harbor points, to New England?

Mr. CAMPBELL. Not from our points; from internal points. It goes from Port Richmond.

Mr. BROWNELL. So far as the Hillside is concerned, Mr. Peters is here, and will give you any information he can. Mr. Ruley,

1729 take during the month of January, 1903, for one more sample month. Then the demand was certainly up to the supply. It varied somewhat. Take broken coal during the month of January; what was the range of prices?

Mr. RULEY. $5.73 was the highest, by Coxe Brothers & Company; $3.93 was the lowest, the Lehigh & Wilkesbarre.

Mr. BROWNELL. And the Hillside?
Mr. RULEY. The Hillside, $4.53.
Mr. BROWNELL. The P. & R.?
Mr. RULEY. $3.96.
Mr. BROWNELL. The Ontario & Western?
Mr. RULEY. $4.24.
Mr. BROWNELL. The D., L. & W.?
Mr. RULEY. $4.12.
Mr. BROWNELL. What was egg coal during that month?
Mr. RULEY. It varied from $8.24 for Coxe Brothers, down to $4.95, the Philadelphia & Reading Coal & Iron Company.
Com'r PROUTY. How much did the Phila. & Reading sell at that price?
Mr. RULEY. They sold 3,286 tons.
Com'r PROUTY. How much did Coxe Brothers sell?
1730 Mr. RULEY. 19,145 tons.
Com'r PROUTY. Turn to some other month.
Mr. BROWNELL. If your honor will permit me in that connection, they sold at $8.24, 19,000 tons. How many did the Hillside sell?
Mr. RULEY. 49,339.
Mr. BROWNELL. Nearly three times as much.
Mr. SHEARN. I don't see how you make it three times as much.
Com'r PROUTY. Turn back to the corresponding month of 1901 and see what were the relative sales of Coxe Brothers and the Hillside.
Mr. BROWNELL. 1901, January, Coxe Brothers, broken coal, 16,710 tons, at $3.53 a ton.
Com'r PROUTY. How much was the P. & R.?
Mr. RULEY. 4,394 tons, at $3.59.
Mr. CAMPBELL. We do not sell broken coal here except in small quantities. This is not our market.
Com'r PROUTY. What did the Hillside say?
Mr. BROWNELL. As compared with 19,000 tons sold by Coxe Brothers, at $8.24, the Hillside sold 49,339, at $5.00.
Com'r PROUTY. That was 1903.
1731 Mr. BROWNELL. Yes, sir.
Com'r PROUTY. What was it in January, 1901—egg coal?
Mr. BROWNELL. 12,599 for Coxe Brothers at $4.34, and 6,438 for the Hillside at $3.85.
Mr. SHEARN. The Penn. Coal Co. was $4.13.
Mr. BROWNELL. The Penn. Coal Co. was 5,576 tons, at $4.13.
Com'r PROUTY. You need not take any more time on that.
The CHAIRMAN. Are there any further questions to be asked of Mr. Ruley?
Mr. CAMPBELL. I want to say I want to examine this schedule. Mr. Brownell has gone over them to some extent, but there were other schedules exhibited at the hearing when Mr. Ruley was on the stand before, and some also emanating from Mr. Ruley produced in evidence in connection with Mr. Baer's examination, and I would like to have the privilege of calling Mr. Ruley for further cross-examination. I want to especially call your honors' attention to the fact that the same principles apply to the other schedules as apply to these. There is just as

much variety about the coal carried by the various companies as in
1732 these, but I am not now prepared to intelligently examine Mr. Ruley without looking over these schedules, and would like to have the privilege of examining him later on.

The CHAIRMAN. Is there any objection to such further cross-examination of Mr. Ruley by Judge Campbell?

Mr. SHEARN. No, sir. If there is this great disparity that they claim, it is all the more remarkable that the circular price should be precisely the same. Is there a trade on earth where that is not so? It is so with tacks; it is so with pickaxes and everything else.

Mr. SHEARN. They have asked you whether there are not two or three grades of coal of different men's that brought a higher price. Is that true of any company except the Reading?

Mr. RULEY. Well, I do not know just to what extent it is true of the others. I do not think circulars are issued by the others like they are on the Reading. I am not very familiar with the different grades of coal. I simply know it is "coal."

Mr. SHEARN. These are the figures they report to you as representing the sales of coal of these sizes at tide water—New York Harbor?

1733 Mr. RULEY. Yes, sir.

Mr. SHEARN. You don't know whether this variation, if there is a variation, is caused by the difference in grade or not, do you? You don't know anything about that yourself?

Mr. RULEY. No; my understanding is——

Mr. SHEARN. Never mind about your understanding. I say these are the figures that these different companies report to you from month to month, showing the prices realized for the different sizes of coal at tide-water points—New York Harbor?

Mr. RULEY. Yes, sir; I wish to say, however, that I have the right at any time to examine the books of the company and verify the figures. All these prices and tonnages can be verified.

Mr. SHEARN. Have you ever verified any?

Mr. RULEY. Yes, sir.

Mr. SHEARN. Have you found them to be correct?

Mr. RULEY. Yes, sir; if I had not I would have made a kick.

1734 Mr. CAMPBELL. Is not white ash the standard to which we nearest conform throughout the entire region?

Mr. RULEY. Yes, sir. I do not think that the special grades, the different special grades of coal there, if all were thrown in the aggregate tonnage, that they would affect it a fraction of a cent.

Mr. BROWNELL. As a matter of fact, they have not been thrown in at all.

Mr. RULEY. My impression is that they are not, except in the case of Coxe Brothers. I don't know about the others.

Mr. SHEARN. You don't know whether they have been or not?

Mr. RULEY. No, sir.

Com'r PROUTY. Did you examine any of the books for April of this year—the books of any company during that month?

Mr. RULEY. No, sir; I did for the prior month—for March. We have not had time to examine them for April.

Com'r PROUTY. Which company's books did you examine?

Mr. RULEY. My recollection is that I examined all of them, I think. I simply come down on them every once in a while.

1735 Com'r PROUTY. What was the circular price for chestnut coal in the month of March, 1903?

Mr. RULEY. Well, I do not really know.

Mr. CAMPBELL. Was it not $5?

Mr. RULEY. I think it was $5.

Com'r PROUTY. Was there not a discount off?

Mr. CAMPBELL. Not for March.

Com'r PROUTY. The discount was made for April?

Mr. CAMPBELL. Yes, sir.

Com'r PROUTY. Take some month that averages more or less than $5. Take March.

Mr. RULEY. What coal do you refer to?

Com'r PROUTY. Chestnut coal.

Mr. RULEY. Well, the price varied—$5.17 for Coxe Bros., and $4.95 for the Philadelphia & Reading Coal & Iron Co.

Com'r PROUTY. Take the Philadelphia & Reading Coal & Iron Co. The price there was $4.95, while the list price was $5. Do you find that they sold to one customer for less than another customer, in examining their books?

Mr. RULEY. No; I can not recall that.

1736 Com'r PROUTY. How do you account for the fact that their price is less than the list price?

Mr. RULEY. I do not try to account for it. The books they keep show their sales of coal—so many tons of coal, so much. That is all.

Com'r PROUTY. Do you remember that during that month they sold to one customer at a less price than they sold to another—the same coal at the same place?

Mr. RULEY. I can not say that I remember that. It could be ascertained.

Mr. ROSS. This statement of yours shows nine operators. These, I presume, are the companies that are in some way identified with the transportation companies, are they not?

Mr. RULEY. Yes, sir.

Mr. ROSS. How many coal operators in the anthracite business are there outside of these nine which you have named here?

Mr. RULEY. I can not answer that offhand. Of course there are independent operators selling coal here in New York Harbor that I can not get any record of, and I do not pretend to keep an account of.

1737 Mr. ROSS. Can you give me an approximate of the number of independent operators who are mining and selling hard coal?

Mr. RULEY. No; I can not.

Mr. ROSS. Is there any way you can ascertain that?

Mr. RULEY. I think I can ascertain it.

Mr. ROSS. Do that and let me know.

Mr. RULEY. I will be glad to.

The CHAIRMAN. If there are no further questions you will be excused.

There being no further questions the witness was excused.

1738 SHUEL T. PETERS recalled:

Com'r PROUTY. What company are you sales agent for?

Mr. PETERS. For the Penn. Coal Co., the Hillside Coal & Iron Co., and the N. Y., Susquehanna & Western.

Com'r PROUTY. You represent the Erie road?

Mr. PETERS. Representing the coal interests of the Erie road.

Com'r PROUTY. What are these returns that you make to Mr. Ruley every month?

Mr. PETERS. I think Mr. Ruley was in error when he made his statement, because the returns we make are turned in directly to the company and the figures and statements made up are furnished him by the company. That is my impression.

Com'r PROUTY. What company?

Mr. PETERS. By the Erie Company or the various subsidiary companies of the Erie.

Com'r PROUTY. The coal companies?

Mr. PETERS. Yes, sir.

Com'r PROUTY. Do you make any returns to Mr. Ruley?

1739 Mr. PETERS. I do not think we make any direct to him at the present time. I could find out from the accounting department.

Com'r PROUTY. You don't know the basis of the returns made to him?

Mr. PETERS. Whatever returns are made to him are facsimile copies of the returns made to the company. We make all the returns for the company every month.

Com'r PROUTY. Just what do those returns show?

Mr. PETERS. They show the average price obtained f. o. b. each month for the various sizes shipped.

Com'r PROUTY. Those prices are f. o. b. New York Harbor?

Mr. PETERS. Yes, sir.

Com'r PROUTY. If you sell coal to be consumed in New York, is that sold f. o. b. New York Harbor?

Mr. PETERS. Practically; yes, sir; always.

Com'r PROUTY. You sell for the same price coal that is to be consumed in New York as on the Sound?

Mr. PETERS. Yes, sir.

Com'r PROUTY. What was the circular price during the month of April, 1903—chestnut coal?

Mr. PETERS. $4.50 f. o. b.

1740 Com'r PROUTY. Mr. Shearn, won't you turn to that circular and see how much his company received?

Mr. SHEARN. $4.49, to Hillside, for egg.

Com'r PROUTY. I am talking about chestnut.

Mr. SHEARN. Chestnut, $4.48.

Com'r PROUTY. It seems to actually have realized and obtained $4.48—two cents off the circular price. How do you account for that variation?

Mr. PETERS. I really don't know. There may have been some circumstances affecting the price made that varied it.

Com'r PROUTY. That is, you may have made some special price to some particular customer?

Mr. PETERS. We would assume the responsibility under any conditions that we thought necessary to make a special price, at all times to take care of trade conditions.

Com'r PROUTY. And any variation from the average price in the case of your company arises from the fact that you have sold at other than the circular price?

Mr. PETERS. That is so. I may say with reference to those averages for the last several months—in fact, since April, 1901—that
1741 the demand has been so great—the public have been frightened from time to time—and the demand is so great to-day, that we could get six or seven dollars a ton. We have not been able to supply the demand. We find out naturally what our competitors are going to do. The only instructions we have had was last winter that under no circumstances should we make the price higher than $5 f. o. b., no matter what the operators or anyone has to say about it. There are various conditions that enter into it, the same way as there are various conditions in the small sizes which very often influence the prices. If a man comes along and says I can not give you any buckwheat coal, but he says I will take care of 50,000 bushels of buckwheat, but you must give me all the prepared sizes.

Com'r PROUTY. Is there a circular price on all of these smaller sizes?

Mr. PETERS. I do not think there has been a circular published on that.

Com'r PROUTY. You sell for what you can get?

Mr. PETERS. Practically.

1742 Com'r PROUTY. And if you didn't get your circular price on the prepared sizes, you would make it up on the small sizes?

Mr. PETERS. That has occurred.

The CHAIRMAN. You mean by that that if the sale of prepared sizes was nominally at the circular price it might vary, I understand, on account of the concessions on other sizes?

Mr. PETERS. Yes, sir; because we have agreed to take care of all a man has.

The CHAIRMAN. Does the man who burns domestic coal in his heater use buckwheat coal for anything?

Mr. PETERS. The poor last winter—the people who needed it most—absolutely declined to handle it. We used every possible way to try and make those sizes go for fuel.

Mr. CAMPBELL. They could if they had known how.

Mr. PETERS. We tried to teach them. A certain amount of pea coal goes into base burners. The dealer does his thimble-rigging and he puts one-third of that into his chestnut and it passes out.

The CHAIRMAN. If there are no further questions to be asked of Mr. Peters he will be excused.

1743 Mr. SHEARN. This variation of one cent a ton, and in some cases two cents, from the circular price, might very well arise from your desire to get rid of a large amount of coal that is lying on the dock very quickly, and so you make some slight concession?

Mr. PETERS. It is very often what they consider stock coal. There are various things that may enter into it. It may not look so good, and there are various things that will enter into the price.

Mr. SHEARN. It might make a variation of a cent?

Mr. CAMPBELL. There is a variation of as much as twenty cents.

Mr. PETERS. Mr. Shearn, the conditions have been such in the last few months that the public did not pay much attention to preparation. What they wanted was fuel.

Mr. SHEARN. Going back a little, I see that for chestnut coal, for December, 1902, your price was $4.99?

Mr. PETERS. Yes, sir.

Mr. SHEARN. You varied one cent?

Mr. PETERS. Yes, sir.

Mr. SHEARN. On account of some one transaction, such as I
1744 have spoken of, where you wanted to get rid of a mass of coal on the dock? That might account for that one cent.

Mr. PETERS. That might account for it. I do not know how to account for it.

Mr. SHEARN. That don't mean that you have a wavering price going up and down from this $5, shifting from day to day, but owing to some special circumstance a given price on a large amount to some particular customer?

Mr. PETERS. I answered that the other day when I was on the stand; that conditions would make our price any time, except last winter, when we had instructions not to go above a certain price. The storage is limited, and to carry coal in cars is almost impossible, and deviations will come almost any time, and any company would assume the responsibility to take care of trade conditions.

Mr. SHEARN. For the same size, chestnut; in November it was $4.99, and in October, 1902, your price was precisely $5?

Mr. PETERS. That is so, possibly.

Mr. SHEARN. There is nothing reported for September?

Mr. CAMPBELL. No coal was sold.

1745 Mr. SHEARN. Between September and June. But going back to May, the Hillside price for chestnut appears to be $4.05 and for stove $4.03. The circular price at that time was $4.50, was it not?

Mr. PETERS. Yes, sir.

Mr. SHEARN. Those variations have come about in the same way?

Mr. PETERS. There is no question about that. It may have been we charged someone not a regular customer more than the regular price.

Mr. SHEARN. In April, 1902, your price for chestnut was $3.98, your circular price being $4.00; and for March, 1902, your price—the Hillside Coal & Iron Co. I am speaking of when I say "your price"—was $4.49 for both stove and chestnut, and the circular price was $4.50 at that time?

Mr. PETERS. I presume so.

Mr. SHEARN. Don't you recollect that?

Mr. PETERS. I think the price was $4.50 for prepared sizes.

1746 Mr. SHEARN. And in February, 1902, the Hillside price for those two grades was $4.49, and at that time the circular price was $4.50?

Mr. PETERS. Yes, sir.

Mr. SHEARN. And in January, 1902, the circular price for those sizes was $4.49, and at that time the circular price was $5.00?

Mr. PETERS. $4.50.

Mr. SHEARN. I should say $4.50.

Mr. CAMPBELL. The $5 price did not go into effect anywhere until after the strike of 1902?

Mr. PETERS. No, sir.

Mr. SHEARN. And in December, 1901, your price as reported here for the Hillside for those two sizes, stove and chestnut, was $4.49, and at that time the circular price was $4.50?

Mr. PETERS. Yes, sir.

Mr. SHEARN. In November your price was $4.48, and at that time the circular price was $4.50?

Mr. PETERS. Yes, sir.

1747 Mr. SHEARN. In October, 1901, your price reported here for stove was $4.51, and your price reported for chestnut was $4.48?

Mr. PETERS. There must have been some condition gotten into that *that* I could not explain now.

Mr. SHEARN. Some unusual condition arose, then?

Mr. PETERS. Yes, sir. Mr. Shearn, I can only say that conditions since 1901 have been such that we have not been able to get enough coal to supply the demand. We shipped to the Missouri River and all over this country.

Com'r PROUTY. Your company seems to have *had* adhered to the circular price more nearly than most of the others. How do you account for that?

Mr. PETERS. I think on the general line of merchandizing. We have offices in Chicago, and Buffalo and New Hav', and we have had our organization for 27 or 28 years, and we have tried to get as good results for the people we represent as we found our competitors obtained. Ours was a farm and the business was a little different. We think the buyers will consult with us in regard to conditions, and it enables us to do a little better than the sales agents of the companies. This is

1748 a revelation to us.

Com'r PROUTY. Do you sell your coal in Chicago f. o. b. Chicago?

Mr. PETERS. We sell it at the docks f. o. b. Buffalo.

Com'r PROUTY. You pay the freight on that?

Mr. PETERS. After it leaves our line the customer pays the freight.

Com'r PROUTY. So you sell that coal f. o. b.?

Mr. PETERS. Some of it is shipped by the lake and some goes all rail.

Com'r PROUTY. Suppose it goes all rail; do you deliver that in Chicago?

Mr. PETERS. We deliver that to the yards in Chicago.

Com'r PROUTY. How is it when you sell to points off your own line of the Erie?

Mr. PETERS. We generally make the freight follow, so as to reduce as much as possible the financial risk.

Com'r PROUTY. Where do you name that price; is the price named at the mine or at the terminus of your road?

1749 Mr. PETERS. At the terminus of the road. We have nothing to do with the freight in any manner or shape. We find what

the price is that is being asked and try to meet the price. We have nothing to do with freight rates in any manner.

Com'r PROUTY. You say you find the price made in Chicago; where do you meet that price, and how?

Mr. PETERS. At Chicago, if we find coal similar to ours selling at $5.25, our salesmen there—of which we have a number—would go through the trade and we would meet that competition.

Com'r PROUTY. And you charge the Hillside Coal Co., which pays the Erie Company, its rate from the mine to Chicago?

Mr. PETERS. We have no interests in through the interior. We have to guarantee all sales and we pay cash for the goods. The other fellow pays the freight.

Com'r PROUTY. The other fellow don't seem to pay the freight.

Mr. PETERS. I don't know who pays it. It may be "Jones." The coal companies may have their freight adjusted with the companies, which we know nothing about.

1750 Mr. SHEARN. Did you sell Pennsylvania Coal Co.'s coal before it was bought by the Erie?

Mr. PETERS. No, sir; we did not—except we bought coal from them from time to time the same as from any other company. In these figures read to you so incompletely, it appears, if the Commission please, that the variation in these early months was largely caused by the discrepancy between the Pennsylvania Coal Co.'s figures and this railroad company's figures. For instance, the Penn. Coal Co., in January, 1901, was charging for chestnut and stove—$4.40 for stove and $4.41 for chestnut, while the Hillside Coal & Iron Company was charging $4.48 for stove and $4.45 for chestnut. That same discrepancy appears in February——

Com'r PROUTY. The Penn. Coal Co. was an independent company.

Mr. SHEARN. Yes, sir. When the merger took place you will find, say in April, 1901, Pennsylvania Coal Co. charged on stove $3.98 and the Hillside Coal & Iron Co. $3.97. They had gotten together there with the exception of one cent.

1751 Mr. PETERS. They thought we were better merchants, possibly.

Mr. SHEARN. When we adjourned the last time, you had just declined to state what your commission was for selling this coal. Without pressing that question upon you, what do you say, from your experience in the business and from your knowledge of the business, is a fair, proper, and usual commission for selling anthracite coal at this point where sales are guaranteed?

Mr. PETERS. Well, I really do not know. There are various basis. I think last winter some of the individual operators paid the commission houses down here five per cent.

Mr. SHEARN. I am not speaking of those times.

Mr. PETERS. The conditions vary.

Mr. SHEARN. That was during the suspension or abrogation of the purchase contracts?

Mr. PETERS. Yes, sir.

Mr. SHEARN. In ordinary conditions, how is it?

Mr. PETERS. It runs at the present time from ten to fifteen cents a ton.

Mr. SHEARN. And where you do not guarantee the sales and
1752 do everything else, what would you say would be the usual commission?

Mr. PETERS. I do not know of any case of that kind to-day.

Mr. SHEARN. What would you say would be the cost to the sales agent, including a fair profit for conducting the business of selling coal down here?

Mr. PETERS. I should think, to answer that roughly, it would cost five to six cents a ton without any consideration of the financial risk.

Mr. SHEARN. And ten to fifteen cents under ordinary conditions where sales are guaranteed?

Mr. PETERS. Yes, sir; at the present time.

Mr. SHEARN. You sell, of course large quantities of D. & H. coal, don't you?

Mr. PETERS. No; not that I know of.

Mr. SHEARN. Then the D. & H. coal that is brought down here by the Erie is not handled by you?

Mr. PETERS. We have none of it.

Mr. SHEARN. Who is that handled by?

Mr. PETERS. By current report, Ward & Olyphant, I understand.

1753 Mr. SHEARN. Those are the people you would go to if you wanted to buy D. & H. coal?

Mr. PETERS. You would go to Ward & Olyphant.

Mr. SHEARN. When you remit the proceeds of the Hillside Coal & Iron Co. coal here, to whom do you make payment?

Mr. PETERS. It is to the treasurer of the company or to the company direct; to Mr. Platten. I think he is treasurer of the different companies operated by the Erie Co. I do not know whether we draw them direct to the company or to the treasurer of that company.

Mr. SHEARN. I believe you were going to look that up before?

Mr. PETERS. I don't think you asked me further on that. It was other matters.

Mr. SHEARN. As you recollect it, you send the money to Mr. J. W. Platten; do you know whether you add to that, "Treasurer of the Railroad Co." or "Treasurer of the Hillside Coal & Iron Co.?"

Mr. PETERS. Whether it is his name or the name of the company, I don't know.

The CHAIRMAN. Evidently you are not quite through with this witness?

Mr. SHEARN. No, sir.

The CHAIRMAN. Then we will take a recess until 2 o'clock.

At 1.10 p. m. the Commission took a recess.

1754 AFTER RECESS.

2 O'CLOCK P. M.

The CHAIRMAN. Mr. Peters, will you resume the stand, please?

Mr. Peters resumes the stand.

Mr. SHEARN. Mr. Peters, have you ascertained to whom you remit the proceeds of the sale of the Hillside Coal & Iron Company's coal?

Mr. PETERS. They have gone directly to the Hillside Company without the mention of any treasurer's name.

Mr. SHEARN. How long has that been the case?

Mr. PETERS. The National cashier told me to-day that he has always followed that method. He has been with us a good many years.

Mr. SHEARN. Then you were in error in saying——
Mr. PETERS. I was not in error; I said "I thought." I was careful about that because I was very uncertain.
Mr. SHEARN. That is all.
The CHAIRMAN. Any further questions to ask Mr. Peters, if not, he will be excused.
The witness was excused.

1755 M. S. KEMMERER, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Kemmerer, what is your business?
Mr. KEMMERER. Mining and selling coal and iron.
Mr. SHEARN. What is the name of your firm?
Mr. KEMMERER. M. S. Kemmerer & Company.
Mr. SHEARN. You have offices in New York and Philadelphia?
Mr. KEMMERER. Selling offices.
Mr. SHEARN. And in both those cities you sell coal—anthracite coal?
Mr. KEMMERER. Anthracite and bituminous coal.
Mr. SHEARN. Do you confine yourself to any particular region for coal to sell?
Mr. KEMMERER. No, sir.
Mr. SHEARN. It comes from various regions?
Mr. KEMMERER. Various regions.
Mr. SHEARN. So that it comes in over the different railroads?
Mr. KEMMERER. Yes, sir.
Mr. SHEARN. Which railroad brings most of your coal to New York Harbor?
1756 Mr. KEMMERER. The New Jersey Central road.
Mr. SHEARN. Does any of it come over the Lehigh?
Mr. KEMMERER. Some comes over the Lehigh, yes, sir; some over the Ontario & Western, some over the Delaware, Lackawanna & Western, and some over the Pennsylvania.
Mr. SHEARN. What road brings your coal mainly to Philadelphia?
Mr. KEMMERER. New Jersey Central, the Reading, and the Pennsylvania.
Mr. SHEARN. You buy coal at the breaker, do you not?
Mr. KEMMERER. We handle the coal at the price at the breaker, yes, sir; and at New York—tide-water price.
Mr. SHEARN. Do you buy coal for sale in either New York or Philadelphia from the Lehigh & Wilkesbarre Coal Company?
Mr. KEMMERER. Yes, sir.
Mr. SHEARN. And you also buy coal at the breaker for sale at those places?
Mr. KEMMERER. Not from the companies. It is individual coal.
1757 Mr. SHEARN. What rate of freight are you charged by the Central Railroad Company of New Jersey from the points where you buy coal that comes over that road to New York harbor points?
Mr. KEMMERER. The rate is about 35 per cent of the tide-water price. It varies from time to time.
Mr. SHEARN. The rate varies from time to time?

Mr. KEMMERER. Yes; I do not know just now what the present rate is. It is about 35 per cent.

Mr. SHEARN. Well, when it is billed to you, is it billed at a percentage rate or a flat rate?

Mr. KEMMERER. A different rate from month to month.

Mr. SHEARN. Well, is that a percentage of the tide-water price?

Mr. KEMMERER. At times it is and at times it does not seem to be exactly.

Mr. SHEARN. For how many years back has this freight charge been to you a varying rate?

Mr. KEMMERER. It has been so for many and many years. There have been no material changes.

Mr. SHEARN. Where does your coal come from that comes in
1758 over the Central Railroad of New Jersey; what is the shipping point?

Mr. KEMMERER. It goes to Elizabethport and Port Johnson.

Mr. SHEARN. Where are the mines located?

Mr. KEMMERER. In Luzerne County.

Mr. SHEARN. Take last month; what rate of freight did the Central Railroad of New Jersey charge you from Luzerne County to Elizabethport?

Mr. KEMMERER. I can not give you that; I can get that for you. I do not keep track of those rates.

Mr. SHEARN. But, as you recollect it, it was not a flat rate, but was a percentage rate?

Mr. CAMPBELL. He said nothing of the sort.

Mr. KEMMERER. I said that rate was changed from year to year.

Mr. SHEARN. If I have made you say anything you did not say, do you wish to make any correction of it?

Mr. KEMMERER. I did not mean to have you infer that I actually did know just exactly what the rates are, but my own idea is that the rate has varied from time to time, probably governed by the price of
1759 coal, but it did not all, in my computations, figure out that way. That is the idea I wanted to convey.

Mr. SHEARN. Then, you would not know how much was going to be charged you for freight by referring to the published tariff rates of the Central Railroad of New Jersey?

Mr. KEMMERER. No, sir; I would not know from that—you say from the published tariff? I thought you were going to say "the published price of coal." The published tariff rates I would be governed by, of course.

Mr. SHEARN. Well, the published tariff rate is fixed, definite, and certain, month in and month out, but the rate you are charged for the transportation of your coal——

Mr. CAMPBELL. He means that the published tariff rates vary. That is what he said.

Mr. KEMMERER. I can not state it any more clearly than I have done. If you want just what we do get I will furnish it. I do not want my statements here not to correspond with any statements you would require me to give.

Mr. SHEARN. Will you furnish the Commission with the freight
1760 rate that has been charged you by the Central Railroad of New Jersey on domestic sizes of anthracite coal, say since January 1st, 1901?

Mr. KEMMERER. Yes, sir; but it does not cut any figure with us, anyhow.

Mr. SHEARN. Why?

Mr. KEMMERER. Because our coal goes largely to line points, consequently the tide-water rate cuts no figure. That is why we do not pay much attention to it.

Mr. SHEARN. You do bring coal to tide, do you not?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. That was a preliminary question asked you, whether you sold tide-water coal here that comes from the Luzerne County region?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. And you have in your offices the information as to what has been actually charged you by the Central Railroad of New Jersey from, say January 1st, 1901, down to the present time, have you not?

Mr. KEMMERER. There is no secret about that. That is open. You will find it in any of their offices.

1761 The CHAIRMAN. You know that these railroads all publish a rate on coal, do you not?

Mr. KEMMERER. Yes, sir.

The CHAIRMAN. Do you understand that you pay that published rate?

Mr. KEMMERER. Yes, sir.

The CHAIRMAN. In all cases?

Mr. KEMMERER. Yes, sir.

The CHAIRMAN. What you meant by saying that the amount you paid varied was that the rate itself varied from year to year?

Mr. KEMMERER. It certainly does.

The CHAIRMAN You do not wish to be understood as saying that you pay any other or different rate than that published by the roads?

Mr. KEMMERER. No, sir.

Com'r PROUTY. How long have you been in the coal business?

Mr. KEMMERER. About thirty years.

Com'r PROUTY. How long have you been shipping coal from the breakers to New York?

Mr. KEMMERER. Probably twelve or fifteen years.

1762 Com'r PROUTY. And during that time has the rate frequently varied—the rate you paid?

Mr. KEMMERER. Yes, sir.

Com'r PROUTY. It frequently varied from month to month?

Mr. KEMMERER. Yes, sir. At one time we pooled all our coal and the rate was made a percentage of six months' showing of what the coal brought. Each one had a statement furnished. That was brought about by the very low price of coal, and it was necessary for the rates to be made low enough to meet the emergency. They could not make a fixed rate very well, the price of coal was so varying, so that in order to encourage operators to go ahead with their work they established a basis of that kind, extending over a period of probably five years.

Com'r PROUTY. There has been some testimony here to the effect that some railroad had brought coal into New York for some coal dealer at a certain per cent of the price at which the coal was sold here. Has that been so in your case?

1763 Mr. KEMMERER. We sell our own coal, so that we would not be affected one way or the other.

Com'r PROUTY. You do not mine coal?

Mr. KEMMERER. We mine it; yes, sir; we mine and sell.

Com'r PROUTY. Do you buy anthracite which you do not mine?

Mr. KEMMERER. Which we do not mine? Yes, sir.

Com'r PROUTY. Take the coal that you do mine—do you ship any of that to New York?

Mr. KEMMERER. The surplus we do; but the trade is principally at line point.

Com'r PROUTY. The freight rate you pay is a very important thing to you, is it not, on that coal?

Mr. KEMMERER. Yes, sir.

Com'r PROUTY. If you have knowledge of the business, you know from time to time what that rate is?

Mr. KEMMERER. Yes, sir.

Com'r PROUTY. Can not you tell about how many dollars and cents a ton you paid for the shipment of coal from your mines to New York?

1764 Mr. KEMMERER. My opinion is that it is about 35 per cent.

Com'r PROUTY. That is so vague. Has that been so in the past, or has it been 40 per cent at times in the past?

Mr. KEMMERER. It was so for a number of years.

Com'r PROUTY. Do you remember how many years you paid about 35 per cent?

Mr. KEMMERER. I do not recollect. It has been 40 per cent at one time, and at one time 55 per cent.

Com'r PROUTY. When do you pay these rates—once a month or once a week?

Mr. KEMMERER. You have got me there. I think it is weekly.

Com'r PROUTY. Who makes the statement of the amount of freight due?

Mr. KEMMERER. The coal freight agent of the railroad company over which the coal is shipped.

Com'r PROUTY. A statement showing the amount of freight money you owe them, and you pay the bill?

Mr. KEMMERER. Yes, sir.

1765 Com'r PROUTY. Now, I understand that you can furnish a statement showing month by month what the rate of freight has been, and we would like to have you furnish that kind of a statement, going back four or five years. If you can not go back that far, show by illustration of a single month about prices you paid.

The CHAIRMAN. Will you prepare that statement and mail it to us here?

Mr. KEMMERER. Yes, sir.

Mr. CAMPBELL. We would like to have the witness on the stand if he is bringing in papers we are interested in. We will have this all

Com'r PROUTY. We do not ask you to do that, Mr. Kemmerer, but just give us enough to show what you have been paying. Go back for some period, say to 1901, and tell us what rate you paid.

Mr. SHEARN. Say to January, 1900.

Com'r PROUTY. Yes; to January, 1900.

Mr. SHEARN. But from your recollection of the matter—and you should have some recollection of it, as you paid the freight—you
1766 have observed that the rate charged you by the Central Railroad of New Jersey appeared to be about 35 per cent of the tide-water price?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. The circular price of coal to-day in New York is $4.70, is it not?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. And 35 per cent of that would be $1.64. Do you understand that you are now paying the Central Railroad of New Jersey $1.64 a ton freight from Luzerne County to Elizabethport?

Mr. KEMMERER. I do not believe that is so. I do not believe our freights are varying in that way.

Mr. SHEARN. What was it that called to your attention the fact that they seemed to be about 35 per cent?

Mr. CAMPBELL. You inserted the phrase in the witness' mouth.

Mr. SHEARN. I stated what the witness said. I object to these interruptions.

Com'r PROUTY. When did the freight stop varying in that way?

Mr. KEMMERER. I would not venture to say just when that was. I can not say.

1767 Mr. SHEARN. In 1901—say the 1st of April, 1901—the price here was $4.50 a ton on prepared sizes, 35 per cent of which would be $1.58. Do you recollect, when coal was $4.50, whether you were paying the Central Railroad of New Jersey $1.58 a ton?

Mr. KEMMERER. I do not keep tab closely on this. I think it was about $1.60. As I say, only our surplus comes here. It is only a small percentage and does not cut much figure with us.

Mr. SHEARN. Whether the freight is ten or fifteen cents a ton more cuts considerable figure with you, does it not?

Mr. KEMMERER. Yes; it does.

Mr. SHEARN. Is there a larger margin of profit than 20 cents a ton on this coal?

Mr. KEMMERER. No; I am losing money on it.

Mr. SHEARN. So that if the price varies——

Mr. KEMMERER. I did not mean that. I mean there is no profit in coal—where a mine is worked out, one of those exhaustive mines—you have to get the money back before you reach that point. In our
1768 business it is a little like these railroads. If you get 5 per cent and no more, you lose your principal. It is like a lumber tract; if you build a railroad into a lumber tract, and if you do not get but 5 per cent on the investment for twenty years, and the lumber tract is exhausted, you lose your principal. That is about the way it is in our business.

Mr. SHEARN. If this price was 10 or 15 cents a ton one way or the other it would make all the difference as to doing business at a profit or loss, would it not?

Mr. KEMMERER. I tried all I could to get good rates. You need not try to teach me anything on that.

Mr. SHEARN. I am not trying to teach you anything; I am trying to elicit something from you. I say a difference of 10 or 15 cents a ton would be of considerable importance to you in the freight rate?

Mr. KEMMERER. I do not know what you are driving at. If you can get 10 or 15 cents off the rate I would be glad to take it up with you.

Mr. SHEARN. That is what we are trying to do. Is it in accordance with your recollection that the rate you have paid the Central
1769 Railroad of New Jersey has been one that has varied slightly or otherwise from month to month the last two or three years?

Mr. KEMMERER. If you want to get my idea whether the Central Railroad of New Jersey are paying on the 35 per cent rate, I will say I do not think they are.

Mr. SHEARN. I am not asking what they are paying.

Mr. KEMMERER. While I think some of the others are, I do not think the Central of New Jersey are. I think they have gone along——

Mr. SHEARN. What other roads do you understand are charging on a 35 per cent basis?

Mr. MOOT. I submit with great respect——

Com'r PROUTY. Mr. Shearn, I think this witness could be better examined after furnishing these figures.

Mr. SHEARN. Those had to do with the Central Railroad of New Jersey. He says he brings coal over other lines. Now, Mr. Kemmerer, do you know from your dealings with other lines that any of these other roads do charge on a basis of 35 per cent, or any percentage of the tide-water price?

Mr. KEMMERER. I would not know of my own knowledge.

1770 Mr. SHEARN. Is the rate charged you by the Central Railroad of New Jersey a flat rate, or is it so much, with so many cents rebate?

Mr. KEMMERER. No rebate. I never was lucky enough to get a rebate from a railroad.

Mr. SHEARN. You bring coal in over the Lehigh Valley Road, you say?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. Where does that coal come from and to what point does it go?

Mr. KEMMERER. We do not handle any coal over the Lehigh Valley Road at tide water.

Mr. SHEARN. Have you brought any of the Lehigh Valley to tide water within the last two or three years?

Mr. KEMMERER. Well, yes; we had some coal over the Lehigh Valley right after the strike.

Mr. SHEARN. Do you recollect what freight rate you paid on that coal?

Mr. KEMMERER. I do not recollect. I have been trying to find out what the rate is ever since, but have not been able to solve it. There has been some difficulty. The operators have been selling their coal to the companies and they diverted the coal to individuals for a
1771 short time. Just what the rates were I do not know.

Mr. SHEARN. Well, the Lehigh Valley was publishing a tariff rate at that time, as at other times?

Mr. KEMMERER. I think that was the rate.

Mr. SHEARN. Do you know whether the rate you paid at that time was the published tariff rate or not?

Mr. KEMMERER. I think it was. I do not think there was any discrimination.

Mr. SHEARN. Do you think you were paying the tariff rate?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. Well, where did this difficulty come from, of determining what the rate was, if it was the tariff rate that was charged?

Mr. KEMMERER. They were selling the coal to the company, upon which there was no rate, and then the coal was diverted to the operators, and the operators thought they could make more money by taking the coal and selling it themselves—many of them did—and they asked to have the coal consigned to them. In making that change I do not know what the rate was.

1772 Mr. SHEARN. That did not have anything to do with you?

Mr. KEMMERER. No.

Com'r PROUTY. What do you mean by the tariff rate?

Mr. KEMMERER. As applied to what?

Com'r PROUTY. What do you mean by the published tariff rate?

Mr. KEMMERER. I was using the words he used—the rate that prevailed from month to month would be the tariff rate.

Mr. SHEARN. Then you have brought in no coal to this point over the Lehigh Valley during the last few years, except during the few months following the strike?

Mr. KEMMERER. We have handled coal of the Lehigh Valley, but we buy it of them here in this market.

Mr. SHEARN. What other road brings your coal to this point?

Mr. KEMMERER. We handle Reading coal; buy it of them and sell it.

Mr. SHEARN. Where does the coal come from that the Reading brings in, and to what port does it go?

1773 Mr. KEMMERER. It comes in to Port Liberty, does it not?

Mr. CAMPBELL. We do not bring any coal to Port Liberty. It is Port Reading.

Mr. SHEARN. It comes to Port Reading, Staten Island?

Mr. CAMPBELL. No; New Jersey.

Mr. SHEARN. From what place does it come?

Mr. CAMPBELL. About forty different places.

Mr. KEMMERER. We buy it here at so much for red ash coal and so much for white ash, and are not supposed to know what mines it comes from. It must be from Schuylkill County and Northumberland.

Mr. SHEARN. Do you buy any coal in Schuylkill and Northumberland counties at the breakers?

Mr. KEMMERER. No, sir.

Mr. SHEARN. Who do you buy the coal from that comes over the Reading?

Mr. KEMMERER. Of the agent of the Reading Company at New York.

Mr. SHEARN. Do you know what freight rate is charged you by the Reading?

Mr. KEMMERER. There is no freight rate.

1774 Mr. SHEARN. You just buy the coal delivered on board the barge at their circular price?

Mr. KEMMERER. Yes, sir——

Mr. CAMPBELL. That is not what you mean, is it?

Mr. KEMMERER. We buy it on board.

Mr. CAMPBELL. That is not what the gentleman tried to make you say.

The CHAIRMAN. Your question, Mr. Shearn, was whether he paid the f. o. b. circular price.

Mr. SHEARN. He nodded his head and said he had, and counsel suggested that he did not mean that. What rate of freight are you charged from the Schuylkill region on domestic sizes of anthracite coal into Philadelphia by the Pennsylvania Railroad, say?

Mr. KEMMERER. I can not give that.

Mr. SHEARN. Can you furnish that information?

Mr. KEMMERER. I do not know. I was trying to think of the collieries we did draw coal from. My recollection is that they have an established rate that corresponds very closely to the Jersey Central and Lehigh Valley rates into Philadelphia.

Mr. SHEARN. Do you pay the Pennsylvania Railroad a flat rate or a percentage rate?

1775 Mr. KEMMERER. A flat rate.

Mr. SHEARN. Do they charge you a flat rate and then allow you so many cents deduction or rebate from it?

Mr. KEMMERER. No rebate.

Mr. SHEARN. Well, deduction?

Mr. KEMMERER. I know what you mean. We never got any drawback of that kind from the railroad. We have no such arrangements. Ours is a flat rate, and always has been. It is the open rate.

Mr. SHEARN. Do you know what rate the Reading charges you from the same region into Philadelphia?

Mr. KEMMERER. No; I do not. That is a matter anybody can find out. Any rates we get are public property. You can get that from any of these railroad men.

Mr. SHEARN. We have not succeeded in getting anything from the railroad men. Will you furnish the Commission with a statement of the rates charged you from the Schuylkill region to Philadelphia by the Pennsylvania and the Reading during this period spoken of?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. Now, over what other road do you bring any coal to either Philadelphia or tide water?

1776 Mr. KEMMERER. None others than those I stated.

Mr. SHEARN. When you buy coal at the breaker and sell it here in New York, you have, do you not, to pay in addition to the freight charges for trimming?

Mr. KEMMERER. No.

Mr. SHEARN. No charge for trimming?

Mr. KEMMERER. No, sir.

Mr. SHEARN. When you buy coal at the breaker and bring it down here to tide water for sale here in New York, what do you find the percentage of waste to amount to between the breaker and tide water?

Mr. KEMMERER. There is an allowance made for that.

Mr. SHEARN. How much is the allowance?

Mr. KEMMERER. At the mines probably one per cent or one and one-half. I do not recall exactly what that is. It usually covers that—just about. It is meant to cover it.

Mr. SHEARN. Does that cover waste in putting on board at the breaker and also the waste in putting on board barges at tide water, or does it simply cover waste at the breaker?

1777 Mr. KEMMERER. It ought to cover the waste. That is, the freight you pay ought to be covered by that.

Mr. SHEARN. The weight you pay on would be what it weighed at the breaker, less this one or one and a half per cent?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. What is the customary and usual commission charged for selling coal in New York—how much a ton?

Mr. KEMMERER. Ten and fifteen cents.

Mr. SHEARN. And in Philadelphia about the same?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. What do you find the situation to be and have you found it to be in Philadelphia since January, 1901, with the exception of the period during and immediately following the strike, as to prices for the same grade of coal at the same time maintained by the different companies that were engaged in selling coal there?

Mr. KEMMERER. I was trying to think.

Mr. SHEARN. What do you find during the period I mention? In Philadelphia there was a common circular price of coal issued and made by the different companies that do business in Philadelphia for the same grade of coal at the same time.

1778 Mr. KEMMERER. I am afraid to state that for fear I will misstate it. That can be easily ascertained from the circulars issued from month—you can get them. They are public property.

Mr. SHEARN. You receive circulars in Philadelphia as well as in New York?

Mr. KEMMERER. Yes, sir; we issue a circular.

Mr. SHEARN. And do you receive circulars from the Reading Coal & Iron Company and other companies in Philadelphia from month to month?

Mr. KEMMERER. We used to. I think we do yet. I am not sure.

Mr. SHEARN. From what other companies?

Mr. KEMMERER. The various ones.

Mr. SHEARN. Please name them?

Mr. KEMMERER. A Well, Weston, Doddson & Company.

Mr. SHEARN. What coal do they handle?

Mr. KEMMERER. Coal that they mine largely, as well as coal they

Mr. SHEARN. What other companies?

Mr. KEMMERER. Maderia, Hill & Company is another Philadelphia firm.

Mr. SHEARN. What coal do they handle.

1779 Mr. KEMMERER. I can not tell you. They handle bituminous and anthracite. I can not tell you just what coal it is.

Mr. SHEARN. You do not know where it comes from?

Mr. KEMMERER. No, sir.

Mr. SHEARN. What other companies issue price circulars in Philadelphia?

Mr. KEMMERER. I can give you a list of those.

Mr. SHEARN. Does the Susquehanna issue a price circular in Philadelphia?

Mr. KEMMERER. I do not know. I suppose so.

Mr. SHEARN. Does the Lykens Valley Coal Company?

Mr. KEMMERER. I do not know of such company. There may be such a one. The Reading handles most of the Lykens Valley coal.

Mr. SHEARN. These circulars you say you are in the habit of issuing and getting on the first of the month in Philadelphia. Is that correct?

Mr. KEMMERER. Yes, sir; sometimes there is a lapse of several months when there is no change, but when there is a change a circular is issued.

1780 Mr. SHEARN. You are not willing to state what your recollection is as to whether or not the prices have been the same at the same time for the same grade of coal?

Mr. KEMMERER. No.

Mr. SHEARN. In New York have you been in the habit also of receiving price circulars?

Mr. KEMMERER. I can answer that other question, whether the different grades of coal vary.

Mr. SHEARN. I said of the same grade of coal.

Mr. KEMMERER. Oh, no.

Mr. SHEARN. In New York have you also been in the habit receiving circulars on the first of the month since January, 1901?

Mr. KEMMERER. We issue a circular. Just what circulars we receive I am not able to answer.

Mr. SHEARN. Have you been in the habit of receiving circulars from the Reading Coal & Iron Company?

Mr. KEMMERER. I could not answer that. At the office I could answer it, but I can not answer it here.

Mr. SHEARN. Have you been in the habit of receiving circulars from the Delaware, Lackawanna & Western?

1781 Mr. KEMMERER. I could not answer that, either. I think probably not.

Mr. SHEARN. Are you also unable to state whether you found that the prices on the price circulars issued in New York on the same grade of coal for the same time were the same?

Mr. KEMMERER. I do not know whether they are always the same. I do not think they are, because the price does not net the same. I do not think the various companies' price here net the same, judging from reports I hear.

Mr. SHEARN. Will you be able to have the statements that have been called for here in court on Thursday morning of this week?

Mr. KEMMERER. I will have my New York agent bring them here and hand them to you, if that will answer—the circulars showing the price of coal.

Mr. SHEARN. That is all at this time.

Mr. GOWEN. I understand that your firm as well as a number of others mentioned is in the habit of issuing circulars from time to time to your customers naming prices for coal?

1782 Mr. KEMMERER. Yes, sir.

Mr. SHEARN. Those circulars as a rule are sent to your customers?

Mr. KEMMERER. Yes, sir.

Mr. GOWEN. Therefore, the circulars issued are not at all confined to the railroad coal companies. They are issued generally in the trade?

Mr. KEMMERER. Yes, sir.

Mr. GOWEN. That is all.

Com'r CLEMENTS. You spoke of a five year period that there was a pooling rate. What was that?

Mr. KEMMERER. It was the individual shippers shipping coal over certain railroads.

Com'r CLEMENTS. What shippers?

Mr. KEMMERER. There were Coxe Brothers; the old Lehigh collieries of the Lehigh & Wilkesbarre, the Spring Brook collieries, George H. Meyer, and the other Lehigh company, and Kemmerer & Company.

Com'r CLEMENTS. What was the arrangement; what was done?

Mr. KEMMERER. They each turned over to an officer, the coal
1783 freight agent of the company, a statement of the amount received each month for coal, the different sizes. That was compiled for each company, so we saw what each company received for all sizes of coal, like the report read here this morning. Then there was an average struck and we arrived at the average price received for coal; then a percentage of that would go for freight and a percentage for coal. It fixed a rate each month based on the price received.

Com'r CLEMENTS. It fixed the freight rate?

Mr. KEMMERER. It fixed the freight rate.

Com'r CLEMENTS. And that was at that time about what—forty per cent?

Mr. KEMMERER. I do not remember what it was. I do not remember now. It was figured differently then. It was taken with so much for commission off the price and so much for wharfage and so forth—a number of items deducted from the average price, and then the percentage taken.

Com'r CLEMENTS. What period did that cover?

Mr. KEMMERER. About five years. It was when Mr. Lathrop was president.

Mr. CAMPBELL. About a quarter of a century ago?

1784 Mr. KEMMERER. Not that long.

Mr. CAMPBELL. Yes; it was.

Com'r CLEMENTS. When did it stop?

Mr. KEMMERER. I do not know.

Com'r CLEMENTS. When that was abandoned what took its place?

Mr. KEMMERER. Then there was an arbitrary rate fixed, I think—fixed and changed from time to time—varying with the price of coal.

Com'r CLEMENTS. It has been generally understood that with respect to various kinds of freight, freight rates were not generally obtained; that is, shippers sometimes got a rebate, or did not pay the full rate at the time of shipment. Have you knowledge of that in regard to the coal business?

Mr. KEMMERER. I do not think I have, with probably few exceptions—little, trivial matters where there was a particular section to be controlled by some man getting a rate to be able to get in there and hold that trade.

Com'r CLEMENTS. You said here that the freight rate varied from time to time—I think you said from month to month. What
1785 rate are you talking about when you speak of that? Do you mean the published rate that the railroads publish at their stations and file with the Interstate Commerce Commission, or is it some other rate you had in mind?

Mr. KEMMERER. I think it is the published rate. There is no secret about this rate at all. It is public property.

Com'r CLEMENTS. I was not sure whether you were talking about that or not.

Com'r PROUTY. When did you publish your last price circular?

Mr. KEMMERER. The first of last month, probably.

Com'r PROUTY. Did you publish one the 1st of April?

Mr. KEMMERER. I think so.

Com'r PROUTY. What was the price named in that circular?

Mr. KEMMERER. I think $4.50.

Com'r PROUTY. How did you come to name that price?

Mr. KEMMERER. There was correspondence between various coal interests, and they decided what would be a fair price to establish, and it was adopted.

1786 Com'r CLEMENTS. What was the object of raising it ten cents a month instead of raising it fifty cents at one time?

Mr. KEMMERER. That was because the business was forced into four months. We could not supply the trade in the four months. The business to the northwest would carry the cars away, and the result was we could not supply the demand in the fall. It drove men with capital out of business, because there was no inducement for a man to buy the coal. By making a lower price in the spring it induces everybody to buy earlier and induces a man to go into business and rent a yard and raise capital and buy coal in the early months of the year, because he can get that difference. That induces him to buy. The average price was thought to be fair at $4.75. They went 25 cents below and 25 cents above.

The CHAIRMAN. If the price of coal was the same in the fall as in the spring, everybody would wait until fall to buy?

Mr. KEMMERER. Yes, sir.

The CHAIRMAN. So you made this arrangement in order to make them buy earlier?

Mr. KEMMERER. Yes, sir.

1787 Com'r PROUTY. What has been the result of that arrangement?

Mr. KEMMERER. It has worked favorably.

Com'r PROUTY. Are you able to supply your orders as they come in?

Mr. KEMMERER. That is because the people are buying early and because of the scare of last year. Many people went through the winter without coal, and a man's wife now when he goes out in the morning asks him if he has bought the coal. If he has not, she probably makes him hunt for it. They do not want to go through the experience of last year.

Mr. SHEARN. You do find, then, that a lower price for coal increases the sale of coal—the demand for coal?

Mr. KEMMERER. I said I thought it was an inducement to buy earlier if you can save fifty cents a ton.

Mr. SHEARN. As you are a miner yourself, what do you find to be the cost of mining coal in your collieries?

Mr. KEMMERER. It costs from $1.50 to $2.00 a ton—probably, as an average, $1.75 a ton. I have collieries where it costs $2.00 and some others where it is as low as $1.50. My collieries may not be the average of all the collieries.

1788 Mr. SHEARN. What have you found to be the increase in the cost of mining coal since the award of the strike commission?

Mr. KEMMERER. I could not give that accurately. My superintendent can give that. He had not figured that out when I asked him, therefore I can not give you the exact figures.

The CHAIRMAN. Perhaps you can approximate it?

Mr. KEMMERER. I presume it is about 20 cents a ton. That would depend on the various collieries. It would be a great deal more where the veins are thin and you have more men employed. When you take large veins that are being largely worked—the best veins are pretty well exhausted, so that men still working an almost exhausted vein do more work; therefore an increase of pay will bear more heavily on the operations there. I have no doubt that in some cases it runs up to thirty or forty cents.

Mr. SHEARN. How large an element in the cost of producing coal is the labor element?

1789 Mr. KEMMERER. That varies so much that it is pretty hard to tell. We have always figured that if coal costs 75 cents a ton at the mine, the other expenses were about equal to that.

Mr. SHEARN. About half, then?

Mr. KEMMERER. Yes, sir.

Mr. SHEARN. That is all.

The CHAIRMAN. Mr. Kemmerer, we understand you will bring us a statement of what you are paying?

Mr. KEMMERER. Any information you ask for I shall be glad to give.

The CHAIRMAN. We want somebody that can tell us exactly what your concern is paying to have its coal brought in—whether you pay the tariff price or some other price.

Mr. KEMMERER. I have offered to give you that published freight rate. I could not give it now, because I have not got it. I want to have it correct.

Mr. SHEARN. We do not want the published rate. We want the rate you paid.

Mr. KEMMERER. The published rate is the rate we paid.

Mr. SHEARN. There can not be any question about his testi-
1790 mony. We know that the railroads have not been filing tariffs every month.

The CHAIRMAN. We understood you to say that the railroad company rendered you a statement every month or every week showing the tonnage carried and the rate, on which the amount of freight due appears.

Mr. KEMMERER. Yes, sir.

The CHAIRMAN. Can not you produce those statements?

Mr. KEMMERER. The freight rates?

The CHAIRMAN. The freight rates. Have you a superintendent or somebody here?

Mr. KEMMERER. Yes, sir.

The CHAIRMAN. Somebody that can bring those bills, showing exactly what you paid?

Mr. KEMMERER. Yes sir.

The CHAIRMAN. Very well. That is all.

The witness was excused.

1791 JOHN W. PEALE, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Peale, what is your business?

Mr. PEALE. The coal business.

Mr. SHEARN. What is your firm?

Mr. PEALE. Peale, Peacock & Kerr.

Mr. SHEARN. In this city?

Mr. PEALE. Yes, sir.

Mr. SHEARN. Do you buy anthracite coal at the breakers?

Mr. PEALE. Some; yes, sir.

Mr. SHEARN. Do you mine any coal?

Mr. PEALE. No hard coal.

Mr. SHEARN. Where do you buy your anthracite coal that you sell in New York?

Mr. PEALE. Some at the breaker and a large proportion we buy f. o. b. on board barge.

Mr. SHEARN. When you buy at the breaker—where are these collieries located principally that you buy of?

Mr. PEALE. In the Wyoming Valley and the Schuylkill region.

1792 Mr. SHEARN. What roads bring your coal into New York Harbor from the Wyoming region?

Mr. PEALE. The Lehigh Valley.

Mr. SHEARN. And from the Schuylkill?

Mr. PEALE. The Reading.

Mr. SHEARN. What is the real point of shipment in the Schuylkill region? Where are the collieries located?

Mr. PEALE. There are several of them; they all take the same rate.

Mr. SHEARN. What is their common gathering point? Do you know?

Mr. PEALE. No; I do not.

Mr. SHEARN. At what rate of freight have you been charged by the Lehigh Valley Railroad Company from the Wyoming region to tide water during the last two or three years—the same rate?

Mr. PEALE. The same rate, I think; yes, sir.

Mr. SHEARN. Do you recollect what the rate is?

Mr. PEALE. $1.55.

1792 Mr. SHEARN. What is the shipping point—the terminal point?

Mr. PEALE. Perth Amboy.

Mr. SHEARN. $1.55?

Mr. PEALE. Yes, sir.

Mr. SHEARN. That is the rate to-day?

Mr. PEALE. Yes, sir.

Mr. SHEARN. Was that the rate in 1900?

Mr. PEALE. I think it was.

Mr. SHEARN. And in 1901?

Mr. PEALE. Yes, sir.

Mr. SHEARN. Have you ever had any arrangement with the Lehigh Valley Railroad Company whereby rates have been adjusted with you so as to make them amount to 35 per cent of the tide-water price?

Mr. PEALE. No, sir.

Mr. SHEARN. It was testified to here by Mr. Meeker, of Meeker & Company, that an arrangement had been made with him during 1900 and 1901 whereby there was a monthly allowance made him to bring the price down to a percentage of the tide-water price, and he said that he understood that that arrangement was common to all

1794 merchants who were bringing in coal over the Lehigh Valley.

Mr. MOOT. That is not a correct statement, I believe. I do not think that Mr. Shearn means to misstate it. He said that he had a contract, and that under this contract——

Mr. BROWNELL. He is not speaking of the Erie.

Mr. SHEARN. No; the Lehigh Valley. He said that he understood that that was common to all merchants bringing coal in over the Lehigh Valley. In answer to a question of Mr. Gowen whether he understood that that was a general prevailing practice, he said it was.

Mr. PEALE. I do not think we ever had an arrangement of that kind with a 35 per cent rate. I do not think we have.

Mr. SHEARN. Have you ever had a percentage rate?

Mr. PEALE. Some years ago.

Mr. SHEARN. How long ago?

Mr. PEALE. It must be five years back or more.

Mr. SHEARN. What was the percentage rate in 1898—take it five years back.

Mr. PEALE. I think it was 40 per cent.

Mr. SHEARN. 40 per cent of the tide-water price?

1795 Mr. PEALE. Yes, sir.

Mr. SHEARN. How long did that arrangement last?

Mr. PEALE. I do not know. I do not know how long it had lasted. My knowledge of it, I think, was just about the time it was concluded.

Mr. SHEARN. Of course, it only lasted until it was concluded. When was it concluded?

Mr. PEALE. I mean that my first knowledge of it was about when it was concluded—about five years ago. Whether it was in force long, I do not know.

Mr. SHEARN. Then you changed to a flat rate?

Mr. PEALE. To a flat rate; yes, sir.

Mr. SHEARN. Are you positive that you have been paying the Lehigh Valley a flat rate of $1.55 during this period when other merchants similarly situated have been paying them a percentage rate that amounted to considerably less?

Mr. PEALE. I am quite sure we have been paying a flat rate. If they have been paying a percentage rate lower, I would like to know it.

1796 Mr. CAMPBELL. The gentleman is mistaken about it.

Mr. SHEARN. It is not my statement. It is Mr. Meeker's statement.

Mr. CAMPBELL. Well, you did not understand Mr. Meeker or he did not understand you.

Mr. SHEARN. There is no room for a mistake. He put in evidence the exact figures, the monthly payments to him.

Mr. CAMPBELL. You will find that you did not understand him or he did not understand you.

Mr. PEALE. Is there any kind of arrangement that has been in effect or force between you and the Lehigh Valley Railroad Company or between you and the Lehigh Valley Coal Company whereby the net rate you have paid for freight from the Wyoming fields to New York has been any different from $1.55?

Mr. PEALE. Not in the five years I mentioned; no, sir. I think not.

1797 Mr. SHEARN. No rebate or deductions or anything of the kind coming from either the railroad company or the coal company.

Mr. PEALE. No, sir.

Mr. SHEARN. What rate has the Reading Company been charging you from the Schuylkill regions?

Mr. PEALE. The same as the Lehigh Valley from the Wyoming region exactly.

Mr. SHEARN. $1.55?

Mr. PEALE. Yes, sir.

Mr. SHEARN. When you buy coal at the breaker and have it transported to tide water, do you have to pay any trimming charge at tide water?

Mr. PEALE. Yes, sir; we do.

Mr. SHEARN. How much does it amount to?

Mr. PEALE. Well, it depends on the character of the vessel loaded. It varies, I think, from three to seven cents a ton, but the charge is absorbed by the vessel out of the freight, so in the end the vessel really pays it.

Mr. SHEARN. In the end you mean the consumer of the coal pays it?

1798 Mr. CAMPBELL. It is a water charge; not a rail charge?

Mr. PEALE. The barge charges it in her freight.

Mr. SHEARN. So that, in order to get that back, the retail price of coal has to be increased from three to seven cents a ton?

Mr. PEALE. Possibly that is so. I do not know how they figure that out and whether they take that into consideration or not. It is a very small item.

Mr. SHEARN. Seven cents a ton is not a small item.

Mr. PEALE. The majority would not carry that. The majority would be three cents.

Mr. SHEARN. What character of vessels take the seven-cent rate?

Mr. PEALE. Sailing vessels.

Mr. SHEARN. You handle bituminous coal also, do you not?

Mr. PEALE. Yes, sir.

Mr. SHEARN. What do you find to be the difference in cost of loading into barges anthracite and bituminous coal?

1799 Mr. PEALE. Well, the railroad companies do that all for us. I do not know whether they find any difference or not. They do that all for us. The trimming charge is just the same.

Mr. SHEARN. Have you also been in the habit of receiving from the different companies here price circulars on the 1st of the month since January, 1901?

Mr. PEALE. Not always. We do, now and then, receive some, but not every month.

Mr. SHEARN. In the year 1901, did not you, from month to month, receive a price circular from the various companies here?

Mr. PEALE. No; I do not think we always did.

Mr. SHEARN. Well, how frequently; how generally?

Mr. PEALE. Well, we might have received circulars two or three times a season, or, maybe, four times a season, but we did not always get them.

Mr. SHEARN. You, too, are advancing the price of coal ten cents a month, are you not, during the summer months?

1800 Mr. PEALE. We are obliged to, because we buy most of our coal from the anthracite companies. We have to charge about the same price they do to get anything out of it.

Mr. SHEARN. Well, you are perfectly willing to, I suppose, if they do?

Mr. PEALE. Yes, sir.

Mr. SHEARN. That is, as they increase the price to you, you increase the price to the customers?

Mr. PEALE. Yes, sir.

Mr. SHEARN. What do you say as to the fair price and cost of selling coal on commission here in New York? How much a ton do you find it amounts to?

Mr. PEALE. You mean the usual charge for doing it?

Mr. SHEARN. Yes, sir.

Mr. PEALE. It is 15 cents a ton.

Mr. SHEARN. Is that where sales are guaranteed?

Mr. PEALE. Yes, sir.

Mr. SHEARN. I think that is all.

Mr. GOWEN. Mr. Peale, won't you look and see when you began to change from the 40 per cent rate?

Mr. PEALE. Do you want the date?

Mr. GOWEN. Yes, sir.

1801 Mr. PEALE. I will look it up.

Mr. ROSS. You buy coal from independent operators also, do you not?

Mr. PEALE. Yes, sir.

Mr. ROSS. Can you give any idea how many of those independent operators there are in Pennsylvania?

Mr. PEALE. I really ought to know, but I am ashamed to say I do not.

Mr. ROSS. Well, approximately.

Mr. PEALE. I should think there are probably seventy-five to one hundred.

Mr. ROSS. Do you buy from any of those who have coal to sell in New York?

Mr. PEALE. We buy wherever we can get it.

Mr. SHEARN. What do you mean by an independent operator?

Mr. PEALE. I mean one not controlled by the railroad company over whose line he may ship.

Mr. SHEARN. Would you include in the class of independent

1802 operators a man that had a contract for the sale of all his coal to a company owned by a railroad company or a contract with the railroad company itself?

Mr. PEALE. No, I do not think he would be considered an independent operator.

Mr. SHEARN. Do you say there are seventy-five independent operators in the anthracite regions in Pennsylvania who do not sell the entire product of their mines to the railroad companies?

Mr. PEALE. I think so.

Mr. SHEARN. Could you mention the names of some of them?

Mr. PEALE. I could mention some from whom we are getting coal.

Mr. SHEARN. Do so, please.

Mr. PEALE. The Wyoming Coal & Land Company, the Wernicke Coal Company——

Mr. SHEARN. Where are they located?

Mr. PEALE. They are located at Scranton. The Sterling Coal Company, the Phillips Coal Company, Reisinge Brothers, the St. Claire Coal Company, the Penn Coal Company—that is about all I remember.

1803 Mr. SHEARN. Now, how does the number of these private operators compare with the number that there were two or three years ago?

Mr. PEALE. Really I have no knowledge of that. Of course, there are not so many, I think, but I have no knowledge——

Mr. SHEARN. Have you knowledge that there are as many as seventy-five?

Mr. PEALE. I think so, considering the number we are taking coal from—and we have not been seeking it very hard—and considering the number of people selling coal at tide water, I imagine there must be seventy-five.

Mr. SHEARN. You say there are not nearly as many as there were?

Mr. PEALE. I do not think so.

Mr. SHEARN. How large a falling off has there been the last two or three years?

Mr. PEALE. Really I do not know.

Mr. SHEARN. Has it been noticeable?

Mr. PEALE. I do not think that in recent years it is noticeable. We all have about the same amount of coal to sell as before.

Mr. SHEARN. I am speaking of the number of people selling.

1804 Mr. PEALE. I think we have as many selling it.

Mr. SHEARN. I understood you to say that you noticed considerable difference in the number of private operators.

Mr. PEALE. I think there is considerable difference. I happen to know some that have sold their coal to the railroad companies, but I do not know that there has been a very large falling off.

Mr. ROSS. It is a fact, is it not, that there are more operators coming into the field all the time?

Mr. PEALE. I think there are as many coming in as there are having their coal taken by contract by the railroad companies; the increase is probably about the same.

Mr. ROSS. They are coming in all the time, are they not?

Mr. PEALE. Yes, sir.

Mr. ROSS. You are a dealer in bituminous coal also?

Mr. PEALE. Yes, sir.

Mr. ROSS. Do you operate a mine?

Mr. PEALE. Yes, sir.

Mr. ROSS. That is all.

1805 The CHAIRMAN. How many people are engaged in selling anthracite coal here in New York who are not connected with any of these railroad companies?

Mr. PEALE. I think there are a large number.

Mr. SHEARN. Won't you name some of them?

Mr. PEALE. I could name some of them, yet I do not suppose that I know ten per cent. You mean exclusive of retail dealers?

Mr. SHEARN. Yes, sir.

Mr. PEALE. I will start out with Whitney & Kemmerer; Ruyter & Marshall; Maderia, Hill & Co.; V. H. Youngman & Co.; A. F. Hill & Co.; W. T. Doublehaff; Joseph E. Ennis; the Weaver Coal & Coke Company; C. J. Wittenberg; The New York Central Coal Company; David Duncan & Son; H. E. Bounds. There are many others, but I do not remember their names.

Mr. SHEARN. That is all.

The CHAIRMAN. Those are all concerns, you understand, that are buying this hard coal in the region of production and at tide water and selling to dealers in coal?

Mr. PEALE. Selling to the retailer and consumer; yes, sir.

Mr. ROSS. Can you give an idea of the number of them in New York City?

1806 Mr. PEALE. Exclusive of retail dealers?

Mr. ROSS. No; who are dealing in anthracite coal, wholesale and retail?

Mr. PEALE. I suppose at least a couple of hundred.

Mr. ROSS. Can you give an approximate idea of the number of dealers in bituminous coal in New York City?

Mr. PEALE. Probably fifty.

Mr. Ross. That is all.

Mr. SHEARN. Are you a member of the Retail Coal Dealers' Association?

Mr. PEALE. No, sir.

Mr. SHEARN. Have you ever attended any of its meetings?

Mr. PEALE. No, sir; I have not.

Com'r PROUTY. Do you know anything about how many tons of coal these independent operators mine?

Mr. PEALE. I do not.

Com'r PROUTY. In your purchases from independents, do you pay a flat price or a per cent?

Mr. PEALE. Mostly a flat price.

Com'r PROUTY. Does that price vary from month to month?

Mr. PEALE. No; the flat price runs through the year.

Com'r PROUTY. That is all.

The witness was excused.

1807 H. L. HERBERT, a witness called on behalf of complainant, being duly sworn testifies as follows:

Mr. SHEARN. What is your business?

Mr. HERBERT. Coal.

Mr. SHEARN. And your firm is H. L. Herbert & Co.?

Mr. HERBERT. Yes, sir; H. L. Herbert & Co.

Mr. SHEARN. You are in business in New York?

Mr. HERBERT. Yes, sir.

Mr. SHEARN. In the sale of anthracite coal?

Mr. HERBERT. Yes, sir; anthracite coal.

Mr. SHEARN. Do you buy any coal at the breaker?

Mr. HERBERT. We buy our coal at tide-water points.

Mr. SHEARN. At tide-water points?

Mr. HERBERT. Yes, sir.

Mr. SHEARN. Do you buy any coal at the breaker?

Mr. HERBERT. No.

Mr. SHEARN. Do you own or operate any coal mines?

Mr. HERBERT. No, sir.

Mr. SHEARN. Have you not a mine known as the Jugular mine?

Mr. HERBERT. No, sir.

1808 Mr. SHEARN. You are not connected with it?

Mr. HERBERT. No, sir.

Mr. SHEARN. Are you not connected with any mine or minin' company that sends coal to New York by the Penn. R. R.?

Mr. HERBERT. No, sir.

Mr. SHEARN. Have you not been?

Mr. HERBERT. We did have—we advanced some money to an operation some months ago, but there is none of that coal comes to New York Harbor now.

Mr. SHEARN. It came then, did it not?

Mr. HERBERT. It did for a short time.

Mr. SHEARN. Over what road?

Mr. HERBERT. The Penn. R. R.

Mr. SHEARN. What was the name of that mine?

Mr. HERBERT. Darkwater.
Mr. SHEARN. Where was it located?
Mr. HERBERT. Near Pottsville.
Mr. SHEARN. What rate of freight did you pay the Pa. R. R.?
Mr. HERBERT. I think a dollar and forty cents. I am not familiar with those details of the business myself at all.
1809 Mr. SHEARN. Did the Penn. R. R. charge you $1.90 with a rebate of so many cents, bringing it down to $1.40?
Mr. HERBERT. No, sir.
Mr. SHEARN. Have you not any such arrangement with them?
Mr. HERBERT. No, sir.
Mr. SHEARN. Who is there in your firm that would know about such an arrangement as that, if it existed?
Mr. HERBERT. I don't know of anyone in my firm that would know of any such arrangement as that. I would know of it myself.
Mr. SHEARN. If there was any such arrangement, who would know it? You say you don't know what rate of freight you were paying.
Mr. HERBERT. Probably the Darkwater Coal Co., whose headquarters are in Philadelphia; probably they would know about it.
Mr. SHEARN. Who is the executive managing officer of your company?
Mr. HERBERT. Mr. H. J. Meyers.
Mr. SHEARN. You said you thought the rate was $1.40?
Mr. HERBERT. Yes, sir.
1810 Mr. SHEARN. That is to South Amboy?
Mr. HERBERT. I am not quite clear about that. I think it was $1.40. I am not sure.
Mr. SHEARN. Who in your company would know what the rate was?
Mr. HERBERT. My office could tell, I think, what the rate was at hat time.
Mr. SHEARN. Who in your office?
Mr. HERBERT. Mr. G. R. Herbert, my brother, would know. I could familiarize myself with it by referring to the books.
Mr. SHEARN. Would your brother also know if you had an arrangement with the Pennsylvania to charge $1.80 or $1.90, and so much off for rebate?
Mr. HERBERT. Yes, sir; he would know, and I would know also. I know of no such arrangement at all.
Mr. SHEARN. When you were bringing coal—when was that company bringing coal to New York?
Mr. HERBERT. Only for a few weeks; just at the end of the strike.
Mr. SHEARN. Was a mine you became interested in during the strike?
Mr. HERBERT. We simply advanced some money to this
1811 operation, and during the great scarcity they shipped some little coal down to us.
Mr. SHEARN. You shipped some to the Manhattan Elevated?
Mr. HERBERT. Yes, sir.
Mr. SHEARN. And you did that that time under contract?
Mr. HERBERT. Yes, sir.
Mr. SHEARN. And it was owing to that contract and the difficulty of getting coal that you shipped it?

Mr. HERBERT. I don't know that. We have other business besides with the Manhattan.

Mr. SHEARN. The great scarcity of coal at that time was the inducing cause of your becoming interested in that mine, now, was it not?

Mr. HERBERT. It may have been influenced by the scarcity due to the strike.

Mr. SHEARN. You were in a position to operate that mine during the strike?

Mr. HERBERT. Not individually or as a firm.

Mr. SHEARN. Arrangements were made with the miners, with the miners' union, which permitted you to operate that mine?

Mr. HERBERT. We had no arrangement with the miners. It was the Darkwater Coal Co. did that.

1812 Mr. SHEARN. There was a great deal of coal in that mine that had already been mined, which was ready to be brought to the surface, was there not?

Mr. HERBERT. I don't know about that.

Mr. SHEARN. Do you know anything about the efforts of that company to get either the Penn. or the Reading Road to bring any of that coal to market?

Mr. HERBERT. No; I do not.

Mr. SHEARN. That would have all fallen within the knowledge of this Philadelphia coal company you have spoken of—the Darkwater?

Mr. HERBERT. Yes, sir.

Mr. SHEARN. That is all.

Witness excused.

Mr. SHEARN. I wish to offer in evidence the Jermyn contract.

Mr. BROWNELL. Counsel offers in evidence a copy of what purports to be a copy of the contract entered into between the Susquehanna Coal Co. and Mr. Jermyn, which is of the same character as the copy of a similar contract between the Delaware & Hudson Co. and the

1813 Hillside Co., which was offered this morning, or attempted to be introduced. The Commission ruled that the question whether the original was admissible was now pending before the Commission for determination, and therefore it would not be proper for any attempt to be made to introduce a copy until a ruling is had. They offer now what purports to be a copy of Mr. Jermyn's contract in evidence. I wish to make objection.

Mr. SHEARN. We have one of these so-called coal purchase contracts which Mr. Jermyn testified he was operating under and which he said he would produce. He said that the reason he did not have the original with him was because his subpœnae called only for contract between specific dates, and that this contract was executed in November, 1900, whereas the specific date called for was subsequent to January, 1901, and therefore he had not brought the original with him. He was asked by the Commission if he would send it or a true copy of the original to the secretary in order to avoid the necessity of bringing the original back from Scranton. Subsequently he sent a copy to the secretary of the Commission, and that copy is now here, and I offer it in evidence.

1814 Mr. BROWNELL. The original of that has been produced or asked for, and the question of its relevency is before the court.

The same question exactly as was submitted to the Commission this morning in regard to another contract is presented.

The CHAIRMAN. No; the difference is this: In this case the witness, who was a party to the contract, said he was willing to produce the contract and would send it to the Commission—the original contract. Suppose the witness was here on the stand and had this contract in his pocket, and he asks if he is willing to produce it, and he says yes, and produces it.

Mr. BROWNELL. The question of the admissability of this contract, its competency and relevency and other questions that arise have been ruled upon by this court when it was attempted to introduce the original in the case. I understand that the same considerations exist that governed your body this morning. I certainly want to state my objections to the reception of this document.

The CHAIRMAN. The witness this morning in effect declined. He must be assumed to have declined. He was unwilling to look at the copy and say whether it was a copy or not.

1815 Mr. BROWNELL. I understand the ruling of the Commission was that it was unnecessary; that the question was before the court, and therefore the question as to putting the copy in should not be followed any further. If I am in error about that, if that ground of objection is overruled, I will pass to others. It seems that the question, after all, is whether this contract is admissible as evidence bearing upon the issues under consideration here. Of course there are two originals of this contract, and there are probably a large number of copies. I believe the Commission has seen them. There is no secret about it—nothing to evade as to these contracts. No one cares whether it is made public or not; but we do object to their being received here as evidence in regard to matters in issue here, and particularly as being received as evidence upon other matters which are claimed to be in issue, but which we are not able to definitely learn are in issue. That question is raised for the Commission to pass upon, and it seems at least proper that this should not be received upon the records of the Commission until the court passes upon that.

Mr. SHEARN. This Commission will hardly take the position that the court is going to overrule the decision of the Commission delib-

1816 erately entered into. This Commission has decided, after a long argument here, that this evidence was material and relevent, and has so certified in its petition to United States court. There is nothing that calls upon this Commission, not anything connected with this investigation, making it necessary to await the determination of the court—not simply because these gentlemen have put themselves in a position of contumacy by refusing to produce contracts that are relevent.

Mr. BROWNELL. Are you to decide that question of law?

Mr. SHEARN. I say it has already been decided by the Commission.

Mr. BROWNELL. Counsel should reserve his remarks until that is determined. This contract is not made between parties to this controversy, but both parties are other than parties to this proceeding before your honorable body. One of the parties to this contract, as well as the respondents to this petition, have objected to the competency and propriety of this reception, which question is before the United States court.

I suggest that it is proper that the question of whether a copy
1817 shall be received now and placed upon the records be deferred until the court passes upon the question. There is this copy that purports to be a copy, counsel says. I do not know whether is or not. It is not even an original. I do not know what this is, except by his statement; a copy, the same as was offered to Mr. Olyphant this morning, purporting to be a contract with the Hillside Coal & Iron Co.

The CHAIRMAN. The Commission has ruled that these contracts are competent in this case. Various witnesses have been on the stand who knew about these contracts, or who had possession or control of them, and we ruled that they should produce them. They refused to do so. We simply could not get possession of them. But when a witness came upon the stand, a party to such a contract—for the purposes of your present question—and produced it without objection, and when we have ruled that the contract was properly receivable and the witness produces it, do you know of any reason why we should not receive it?

Mr. BROWNELL. Only the reasons I have stated.

The CHAIRMAN. That was a reason that would show we had made an erroneous ruling.

1818 Mr. BROWNELL. It was a question of whether it was admi'sable or not, and those questions are before the court for decision.

The CHAIRMAN. So far as we are concerned, we have held that it is admissible. The question before the court is whether you shall be compelled to produce the contracts after having refused to do so, the Commission having ruled that you ought to do it.

Mr. BROWNELL. I wish to make the objection, and if that is overruled I wish to state my objections to the reception of the paper that is offered. I renew the objection to it on all the grounds stated before, and object to it as being incompetent, immaterial, and irrelevent on the ground that it is a contract made between parties who are not parties to this proceeding, and on the ground that it is not relevent or material to any of the issues raised by the petition and complaint in this proceeding, and the answer.

The CHAIRMAN. You concede that the witness stated that he had made such a contract and that he had it in his possession at home?

Mr. BROWNELL. He stated that he had made a contract. I
1819 do not know as to the correctness or the accuracy of this copy.

The CHAIRMAN. The Commission said he might send a copy.

Mr. BROWNELL. That might be; I have no recollection of it. I renew this objection. I would like to ask counsel the purpose for which it is offered, and its b'aring upon the allegations and claims in his petition?

Mr. SHEARN. I respectfully decline to state. The Commission understands it is relevent and has ruled that it is relevent.

Mr. BROWNELL. Counsel declines to state.

The CHAIRMAN. That has been argued at some length, and the Commission has decided it.

Mr. BROWNELL. It has been argued. I did not know it had been decided.

The CHAIRMAN. I mean as to the admissibility of these contracts in this proceeding.

Mr. BROWNELL. I can concede that there a great many questions that

have been asked and a great many pieces of evidence offered that might be competent and relevant upon an inquiry of the Commission,
1820 if the inquiry here being made was an investigation by the Commission into the affairs of common carriers generally upon conditions where the Commission might have power to investigate. If we are correct in our understanding, the proceeding we are here to meet is that in which Mr. Hearst is complainant and we are respondents.

The CHAIRMAN. We have held in this proceeding an investigation with regard to the issues presented in this proceeding that these contracts are admissable.

Mr. BROWNELL. If that is the ruling, I know where we stand.

The CHAIRMAN. We have intended to put our ruling upon the ground that these contracts were admissable unto the issues in this proceeding.

Mr. BROWNELL. And not receivable for any other purpose?

Mr. GOWEN. You will understand that counsel have all joined in the objections stated by Mr. Brownell.

The CHAIRMAN. Yes, sir; we understand that. We held that
1821 these contracts were admissable. All of the witnesses but one, when we made that ruling, refused to produce them. The question that goes to the court is whether they should be compelled to produce them. But here was a witness that was willing to produce it. He has a contract. Why should we not receive it?

Mr. BROWNELL. I would like to call your honors' attention to the fact which appears in the copy of the contract here, that it is a contract made between residents and citizens of Pennsylvania, in Pennsylvania, to be executed solely in Pennsylvania, and in regard to the sale and purchase of a commodity, of an article, in Pennsylvania solely.

The CHAIRMAN. We are constrained to overrule your objection, and will receive the contract.

(The same is hereto attached and marked "Exhibit 3 A.")

Mr. SHEARN. Mr. Jermyn testified that the coal came to tide water. Now, I wish to read into the record certain parts of this contract, as follows:

1822 "This agreement, made and executed in duplicate in the city of Philadelphia, Penna., this first day of November, nineteen hundred (1900), between John Jermyn and Joseph J. Jermyn, of Scranton, Pennsylvania (hereinafter called the Sellers), parties of the first part, and the New York, Susquehanna and Western Coal Company, a corporation of the State of Pennsylvania (hereinafter called the Buyer), party of the second part, witnesseth:

"First. The Sellers hereby sell, and agree to deliver on cars at breakers to the Buyer, all the anthracite coal hereafter mined from any of their mines now opened and operated, or which they may hereafter open or operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:"

Then is set forth a full description of the mines owned by the sellers.

"Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for the next
1823 month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the

Sellers' coal so as to enable the sellers' collieries to be worked as many days as practicable, with due regard to the general market conditions and to give orders for shipment which will enable the Sellers to work their collieries as many days in each year as other collieries work similarly situated.

"The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms, or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the 1st of January in each year by the parties hereto, and, on their failure to agree, the president for the time being of the Girard Trust Company shall select a suitable expert
1824 for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Sellers may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

"Second. The Buyer agrees to pay and the Sellers agree to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at breaker:

"For all sizes above pea coal, sixty-five (65) per cent of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

"For pea coal, fifty (50) per cent of the general average f. o. b. prices for pea coal at said tide points at or near New York, when the said price is two dollars and fifty cents ($2.50) per ton or less, and for each advance of ten cents per ton in the said f. o. b. price above two dollars and fifty cents ($2.50) the proportion paid the Sellers shall be increased one (1) per cent, until the percentage paid for pea coal reaches sixty-five
1825 (65) per cent.

"For buckwheat coal No. 1, forty (40) per cent of the general average f. o. b. price at said tide points at or near New York when the said price is two dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price, the proportionate price paid the Sellers shall be increased two (2) per cent, until the said f. o. b. price reaches two dollars and fifty cents ($2.50), after which the proportionate price paid the Sellers shall advance one (1) per cent for each ten (10) cents advance in the f. o. b. price above two dollars and fifty cents ($2.50) as in the case of pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for buckwheat No. 1 coal a rate higher than for pea coal.

"For all sizes smaller than buckwheat No. 1 the Sellers shall receive twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten cents increase in the general average f. o. b. price above one dollar and thirty cents ($1.30) a ton at tide, the price shall be increased

five cents per ton; but it is understood that the Buyer shall have
1826 the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations. * * *

"And it is also understood and agreed that the Sellers shall have the right to sell and dispose of on their own account, and at such prices as they shall see fit, the excess of the sizes of coal smaller than buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

"Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish not later than the 8th of each month a statement of the quantity of each size sold during the preceding month and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Lackawanna region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Sellers, by whom they shall
be accepted, subject to the right of appeal to the arbitration board,
1827 in settlement between Buyer and Sellers. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to the Buyer and Sellers. It is understood that when the words f. o. b. prices occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage, or any other charges.

"Fourth. It is understood and agreed that the Sellers shall have the right to sell and dispose of, at retail, on their own account, coal for use and consumption of their employees and others in the immediate neighborhood of Sellers' colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Sellers' colliery breaker by wagon. * * *

"Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Sellers under this contract shall be weighed either upon scales at mines tested and approved by the buyer, or upon the weigh scales of the railway over which it passes on its way to market, and the amount of coal in each car
shall be determined by the certificate of the weighmaster at said
1828 scales. An allowance for waste shall be made of such amount as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

"Eleventh. The Sellers will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignee named by the Buyer, and to such other parties as the Buyer may direct, such copies or manifest and such notice relating to coal shipped as the Buyer may direct; and the Sellers will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery. * * *

"Sixteenth. It is also understood and agreed (anything herein to the contrary notwithstanding), that if at any time or times the average f. o. b.

price at tide for sizes of coal larger than pea coal shall be less than three dollars and fifty cents ($3.50) per ton, then the Sellers may, at their option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach three dollars and fifty cents ($3.50) per ton; provided, however, that two weeks' notice of
1829 intention to stop deliveries shall in such case be given by the Sellers to the Buyer; and if any question arises as to the price being less than three dollars and a half it shall be submitted to the arbitration board."

1830 Mr. Ross. On behalf of the D. L. & W., I desire to object to the Commission considering that contract as applying to the Lackawanna, for the reason that the terms and provisions of that contract are different from the terms and provisions of the Lackawanna. I simply want to call that to the attention of the Commission.

Mr. SHEARN. May I ask at what hour the court is going to adjourn, because the next witness is Mr. Childs, the general manager of the Ontario & Western, and his examination will take some time, and I understand Mr. Baer is asked to be here the first thing in the morning.

Mr. KERR. Mr. Childs will be here in the morning.

The CHAIRMAN. You have no other witness present whose examination will be finished in a short time?

Mr. SHEARN. No; Mr. Childs has been here——

The CHAIRMAN. We will take an adjournment until to-morrow morning at 10.30 a. m.

Adjourned to Tuesday, June 9th, 1903, at 10.30 a. m.

1831 NEW YORK, N. Y., *June 9, 1903—10.30 a. m.*

The CHAIRMAN. Gentlemen, please give us your attention. Mr. Baer, it is desired to ask you some questions this morning. Will you kindly take the stand?

GEORGE F. BAER, recalled.

Com'r PROUTY. This complaint alleges, Mr. Baer, that your rates from the coal regions to New York and some other points are unreasonable

Mr. BAER. Yes, sir.

Com'r PROUTY. That seems to be one of the principal questions here, and I want to ask you some questions about that branch of the case. What is your rate from the coal regions to New York Harbor?

Mr. BAER. $1.55 to Port Reading.

Com'r PROUTY. And about what is the average distance that you carry that coal at that rate?

Mr. BAER. About 180 miles.

1832 Com'r PROUTY. And your rate to Washington is what?

Mr. BAER. I can not give you that.

Com'r PROUTY. I think it is about $2. It is sufficient to take the rate from your collieries to Port Reading—180 miles, at $1.55, you say?

Mr. BAER. Yes, sir; that is, free on board.

Com'r PROUTY. That puts the coal on board the vessel or barge. Now, in your own mind, why do you say that is a reasonable rate?

Mr. BAER. Because, in the experience of thirty or forty years or more in carrying anthracite coal we have found that is a less rate—a less

proportionate rate—than customary, and with that rate the company has not been able to make money.

Com'r PROUTY. So that you base your opinion as to the reasonableness of the rate upon the fact that while charging that rate the company does not earn at least an excessive amount?

Mr. BAER. It does not earn the rate of money—the rate that money in other industries earn in other business enterprises. As I said before, my judgment about any investment is that there is what we call
1833 a normal rate of interest and earning power in a community; and an investment is not profitable unless there is a return to the investor equivalent to the prevailing rate of interest that seems to be the measure of the earning power of money.

Com'r PROUTY. It is often said by traffic men that the rate upon a commodity of low value should be lower than the rate of a commodity of high value.

Mr. BAER. Undoubtedly.

Com'r PROUTY. Coal is of low value, is it not?

Mr. BAER. Yes, sir.

Com'r PROUTY. And in the application of that rule coal ought to take a low rate in comparison with other rates?

Mr. BAER. Yes, sir.

Com'r PROUTY. Do you take that fact into account?

Mr. BAER. Oh, yes.

Com'r PROUTY. Do you transport on your line any commodities of less value than coal?

Mr. BAER. Iron ore would be of less value, and bituminous
1834 coal. Bituminous coal is probably of less value. Other commodities are stone, sand, and certain kinds of low-grade ore that are lower in value than anthracite coal.

Com'r PROUTY. You can handle commodities cheaper in carloads than in less than carloads?

Mr. BAER. Certainly.

Com'r PROUTY. And the rate is ordinarily less on carload traffic than less than carload traffic as a general principle?

Mr. BAER. Yes, sir.

Com'r PROUTY. And as the density of traffic increases the freight rate decreases; that is to say, on railroads where traffic is very dense the rates are less than they are on railroads where the traffic is very light?

Mr. BAER. Yes, sir; generally that is so, but I do not think it applies in the broad sense to our system. Our lines are very short and the traffic is very heavy. The passenger traffic is very large by reason of the numerous trains which we must run from the city. Our tracks are crowded with passenger trains, and we can not make the time with a full train, say, of coal with ordinary delays on a road that runs through
1835 such a densely populated country. Neither can we have the same size of trainloads. We must, to a certain extent, shorten our trains in order to handle them quickly and get them out of the way of passenger trains and express trains. Although we have four tracks part of the way from here to Bound Brook and two and three tracks other places, we constantly find that there is a great delay in the movement of our traffic. If you take a long system of double-track road, freight trains

can move often at a regular speed, one following the other, but in our case, where we move 260 trains—passenger trains—I believe it is 260 trains a day out of the Reading terminal, a train moving out about every ten minutes—trains going out into the suburbs—and running fast and must have the right of way going and coming. Therefore we are constantly compelled to put our freight trains on sidings in order to give the right of way to these passenger trains and to through express trains. So the movement of heavy traffic, like anthracite coal and bituminous coal, is obstructed. The other difficulty is that on most of this traffic we have a very short haul, and our tracks are apt to be blocked at these very
1836 large industries—for example, at an industry like the Phoenix Iron Works—to use that as an illustration—where they have not the storage capacity to unload their cars rapidly. They may get in 100 cars at a time of ore or coal or various kinds of supplies, and those cars block our tracks because they can not handle them rapidly. It is so with all large manufacturing industries in eastern Pennsylvania. We have to allow the cars to stand on our tracks awaiting the ability of the manufacturers to unload. That is a source of constant interference with our traffic. We have tried to overcome that by constructing large yards. Now, we can not get yards in the large cities or near the cities. They may be six or seven miles away from the manufacturer, so that it involves a heavy delay and expense.

Com'r PROUTY. So that in the case of the Reading road, in your opinion, it costs more to move this traffic than it would if the traffic were less dense?

Mr. BAER. Yes; I think so.

Com'r PROUTY. As traffic increases the cost per ton-mile of providing the way and maintaining the way, and maintaining the office force decreases?

1837 Mr. BAER. Undoubtedly.

Com'r PROUTY. And that is true of the Reading system as well as of any other system?

Mr. BAER. It is true as a general proposition, but it is not correct in this respect, that by reason of the increased cost of many things the cost of transportation has increased, comparing the cost of transportation now with several years back. Notwithstanding the enormous volume of business, it has increased very, very heavily. So that our transportation expenses are increasing and our rates have not increased. We have not increased any rates since I am president of the road; and yet the cost of transportation—I happen to remember the figures—in the item of wages alone on the Reading system within the last year the cost of transportation has increased $1,200,000. Now, in the item of supplies the increase is very, very large. Everything has advanced in price in the last two years except steel rails. There has been no increase in steel rails, but there has been a heavy increase in everything else that goes under the head of what we call supplies for railroads. The increase in
1838 ties, for example, has been very great. I am now having a statement made up to show what the increase in supplies alone has been in the past year. I am under the impression, including rails—in which there has been no increase—that it will amount to from five to seven per cent. In some cases it runs as high as twenty-five per cent;

but the fact that there has been no increase in the price of steel rails brings the average down.

Com'r PROUTY. Have your net earnings, in the last five years, decreased or increased?

Mr. BAER. The net earnings of the last five years have not, on the railroad, increased. I brought over the report. I would like to give that accurately. I could not speak accurately without the papers before me. We had strikes and troubles, so that it is difficult just to say exactly. They have varied from year to year.

Com'r PROUTY. I have here a statement, made up by one of our clerks from your statistical reports to the Commission, going back three years, which shows that your net earnings in 1900 were $12,192 per mile.

1839 Mr. BAER. Per mile?

Com'r PROUTY. Per mile. And in 1902 your net earnings were $12,613 per mile.

Mr. BAER. I can not answer that. That is not any way to get at the earnings of a system of railroads. What mileage does it take in our system?

Com'r PROUTY. Your mileage was practically the same in 1900 as in 1902, and these earnings per mile would be your net earnings divided by the number of miles.

Mr. BAER. It depends on what divisor you take for the number of miles. We have in the Reading system a mileage of 2,400. Now, then, that is our total mileage. The mileage of the Reading system proper—I mean of the corporation known as the Reading Railroad—is five hundred and some miles; the mileage of main line is six hundred and something, making in the neighborhood, as I recollect it, 1,063 miles of main line, and altogether, with all our tracks, two thousand four hundred miles, about. I think the true way is to take the net earnings as shown on the balance sheet.

Com'r PROUTY. We will come to that presently. Let us finish
1840 the other branch of this matter first. Is there any other commodity which you transport more cheaply than you do coal—at a less cost? What is your opinion about that?

Mr. BAER. I should say that bituminous coal is transported more cheaply than any other commodity.

Com'r PROUTY. About what is the rate per ton mile that you charge from the collieries to Port Reading—$1.55 for an average distance of 180 miles you say? What does that figure out per ton mile?

Mr. BAER. That is double that, of course, because the cars go back empty.

Com'r PROUTY. Reckon it in the first place with the cars loaded and take it with the cars going back empty afterwards. How much do you charge per ton mile for the transportation of that coal?

Mr. BAER. 180 into $1.55. That includes, of course, the handling of the coal at the terminal.

Com'r PROUTY. We will get at that later.

Mr. BAER. It is eight mills practically.

Com'r PROUTY. And what is the average which the railroad receives for all its freight, carload and less than a carload—freight of all kinds?

1841 Mr. BAER. I could not give you that.

Com'r PROUTY. I have here your annual report to the Commission, which shows it to be about eight mills and a fraction. This seems to be 8.31 mills, according to your report, per ton mile. Now I want you to please state the reason which justifies you in charging as much per ton mile for the transportation of this commodity—one of the cheapest which moves in carloads and in train loads—as you charge on the average for all the traffic on the Reading road. Just name all the items which enhance the expense of transporting the coal, over other commodities.

Mr. BAER. The traffic of the Reading Railroad, what we call the merchandise traffic, has to be carried at a low rate, because its principal business comes from manufacturing industries along its line. The haul is generally and always very short. We are compelled to carry their supplies and to carry their finished products so as to enable these manufacturers to compete with any other manufacturers in the West and in the South, or wherever they may be located. We therefore can

1842 not get as high a rate of freight as many people suppose we do.

Mr. PROUTY. That is on your merchandise freight?

Mr. BAER. On our merchandise freight. When it comes to anthracite coal traffic I can only repeat what I said the other day. The Reading system was built for the purpose of transporting the anthracite coal. That is its principal product. It is an expensive business to handle at the initial terminals, at the collieries, and in the cities. We have many laterals built, at great expense, to the collieries. The grades are very heavy, in some instances 180 feet to the mile. The roads are expensive to build. They are expensive to maintain. So the gathering or assembling of the products is very expensive. The line we built to the collieries can only be used for that purpose practically, and when the collieries are exhausted the railroad ceases to be of value. When we come to the cities we are met with the question of distribution. Most of our coal is used for domestic purposes; 60 per cent of it, about, goes into domestic use.

Com'r PROUTY. We are talking about the coal that goes to Port Reading.

1843 Mr. BAER. The coal to Port Reading is a comparatively small quantity of the coal, and it is carried at a less rate per mile than the coal within the State of Pennsylvania. I think the best demonstration of our inability to do it is shown by the actual figures of last year, for example. There was no falling off in our merchandise traffic in June, July, August, and September of last year. There was an increase in our bituminous traffic amounting in the four months—the receipts I mean—to $552,000. Our receipts from anthracite traffic during that time amounted to $132,000, as against $3,232,000 in the same months in 1901, when we were transporting full. The financial result was that in the four months of June, July, August, and September there was a deficit of $1,356,000 in the operation of the Reading road. In the four months of 1901, when we had the anthracite traffic, we had a surplus of $515,000. Yet that surplus in these four months was not adequate to pay dividends upon our stock—I mean at that rate through the year.

So if there is any reduction at all in the rate on anthracite coal,
1844 it will be impossible for the Reading Railroad Company to make any money—any substantial reduction. You see there was a loss of $3,100,000 on account of anthracite coal receipts. Notwithstanding a gain of $552,000 in bituminous receipts, that caused a net loss in the operations of the company in the four months of $1,356,000.

Com'r PROUTY. How much would it reduce your net receipts to reduce the rate on coal, on anthracite coal, 25 cents a ton? How many tons do you carry?

Mr. BAER. It would reduce our net receipts—I will figure that out.

Com'r PROUTY. On the gross receipts and net receipts it would be just alike. It costs you just as much to handle the coal in one case as in the other.

Mr. BAER. We can count on abont 11,000,000 tons a year. It would be 25 times that. It would reduce the receipts $2,750,000.

Com'r PROUTY. It would reduce your gross receipts that much?

Mr. BAER. Yes, sir.

Com'r PROUTY. And it would reduce your net receipts the same?

1845 Mr. BAER. Yes, sir; the reduction would be $2,750,000.

Com'r PROUTY. Now, Mr. Baer, the Philadelphia & Reading Railway Company owns how many miles of railroad? I am not talking about the Central of New Jersey, but about the Philadelphia & Reading Railway Company.

Mr. BAER. The Philadelphia & Reading Railway Company owns 365.61 miles of main line with a total of 1,055.29, total of track.

Com'r PROUTY. What is the total?

Mr. BAER. 1,055.29. Miles of leased roads 627, with 1,342.07 of track—total.

Com'r PROUTY. Are you including there the Central of New Jersey?

Mr. BAER. No, sir; total, 1,003.33 miles of line, and total miles of track, 2,397.36 miles. In addition to that the Reading Company owns interests in a number of roads which are enumerated on page 31 of our annual report of 1902, making the whole system 2,145.22 of main line, and 4,558.93 of total miles of track.

Com'r PROUTY. Now, I have before me the last annual report
1846 of the Philadelphia & Reading Railway Company, for the year ending 1902, which does not appear to agree with that.

Mr. BAER. I am reading from items on page 31 of the fifth annual report.

Com'r PROUTY. I am not talking about your annual report to your stockholders, but about the report of your company made under oath to the Interstate Commerce Commission.

Mr. BAER. Well, I do not know how that was made up.

Com'r PROUTY. This annual report shows that the Philadelphia & Reading Railway owns 365.61 miles.

Mr. BAER. Yes.

Com'r PROUTY. That corresponds with what you gave there?

Mr. BAER. Yes.

Com'r PROUTY. It shows that it leases and operates 640.31 miles, making a total operated mileage of 1,005.92?

Mr. BAER. That is right.

Com'r PROUTY. You say, in fact, that you have 2,000 miles and over?

1847 Mr. BAER. The total miles of track. The report is only for what is called the main line; that is the length of road. Now, this is total miles of track.

Com'r PROUTY. You include there your second, third, and fourth tracks and sidings?

Mr. BAER. Yes, sir.

Com'r PROUTY. Then the Philadelphia & Reading owns 365 miles in length of line?

Mr. BAER. Yes.

Com'r PROUTY. And operates 640 miles in length of line—leases 640 miles in length of line?

Mr. BAER. Yes, sir.

Com'r PROUTY. Making in all a total of 1,005.92 miles of single track which it operates?

Mr. BAER. Yes, sir.

Com'r PROUTY. The Philadelphia & Reading Railway Company appears to have a funded debt of $67,683,000 or about $185,000 a mile of single track?

Mr. BAER. Yes.

Com'r PROUTY. Was that 365 miles an expensive road to build?

Mr. BAER. Very.

1848 Com'r PROUTY. Where is it situated? What makes it expensive?

Mr. BAER. There are probably 300 miles of track in the city of Philadelphia. How is that, Mr. Harris?

Mr. HARRIS. My impression is that it is over 300 miles.

Mr. BAER. There are over 300 miles in the city of Philadelphia.

Com'r PROUTY. Not 300 of the 365 miles?

Mr. BAER. No; not main track. The single line of railway is probably not a fair measure of the cost of a railroad; at least I would not think so.

Com'r PROUTY. What is the Philadelphia & Reading Terminal Railroad?

Mr. BAER. It is the railroad that is constructed from about a point a mile or a half a mile this side of our terminal station in Philadelphia, the original Reading Railroad terminating at Broad and Callowhill street, and the Norristown & Germantown, which is a leased line, and terminating at 9th and Green street. The terminal railroad was organized to construct a line of railroad from 9th and Green street to 12th and

1849 Market street in Philadelphia, and also from 13th and Callowhill to 12th and Market streets, and it covers the construction of that elevated system and the terminal building. The Reading Terminal owns the building and stations.

Com'r PROUTY. Does that include any part of your freight terminals in Philadelphia?

Mr. BAER. Yes. We do not run freight trains into that terminal, but we have coal yards at the junction of the two lines, just this side of the terminal, at about 10th street, I think it is.

Com'r PROUTY. And you pay a rental of $450,000 a year?

Mr. BAER. Yes, sir. Then there is a subway connecting with that, the total cost of which I do not know. Our proportion is about three and a half millions and the city paid the balance. The subway alone, you will find in the balance sheet, was $2,720,000. We have paid a considerable sum of money on that. It will cost us altogether—our share would be in the neighborhood of $5,000,000, including the changes which we had to make to get to it.

1850 Com'r PROUTY. Your capital stock outstanding is $20,000,000?

Mr. BAER. Yes, sir.

Com'r PROUTY. You earned last year, gross, $29,000,000 and something over?

Mr. BAER. I presume that is correct.

Com'r PROUTY. And your income from operations was $12,686,000?

Mr. BAER. $12,999,000 on page 8.

Com'r PROUTY. That includes your earnings from all sources?

Mr. BAER. No, sir. It would include all the Reading Railway; yes, sir. There are no other sources for earnings of the Reading Railway.

Com'r PROUTY. This shows your earnings from operations were $12,687,586, and your income from other sources $345,156?

Mr. BAER. That would be right.

Com'r PROUTY. Now, the interest on your funded debt, which averages five and a half per cent, amounted to $3,326,687. Is that correct?

1851 Mr. BAER. The interest on the funded debt is $3,891,554.10, as I have it.

Com'r PROUTY. This report shows interest on funded debt of $3,326,687; interest on current liabilities, $507,824. That would all aggregate about what you give as the item of interest?

Mr. BAER. On page 39 of your report you have it in detail.

Com'r PROUTY. We have it here in detail.

Mr. BAER. I have no doubt those are correct; but without going over that report and seeing how the items are made up, I do not know whether the subway loan is in that, on which we pay interest, but I take it that it is.

The annual report is made up about September when the final accounts are in and we can get at the figures we suppose accurately, after the auditor and accountants have been over it and the result of that gives the figures I have named.

Com'r PROUTY. The amount of your rents per year is how much?

Mr. BAER. Rent of leased lines $3,105,933.34.

Com'r PROUTY. It is given here larger than that—$3,419,330.

1852 Now, deducting those items, which are your interest charges and your rentals from your net income of $13,000,000, how much is left?

Mr. BAER. Well, in the first place, our net gross income for that year was $12,653,882.44. Out of that was taken $2,253,503.21 for equipment and renewals, for the insurance money, and for improvements; leaving $10,400,379.23. The net earnings from all sources were $10,745,535.65, and the fixed charges were $9,519,123.48. The two items which you have named do not represent the total, because the equipment is owned by the Reading Company and is leased to the railway company. Take the rental of equipment alone, it is $1,576,000 to the Reading

Company, in addition to car trusts. So that the actual fixed charges on the Reading railway system are $9,519,123; leaving a surplus for net earnings of $1,226,412.

Com'r PROUTY. The report from which I read is a sworn report of the Philadelphia & Reading Railway Company?

Mr. BAER. Yes, sir.

Com'r PROUTY. Made by some officer of that company—I
1853 expect the controller, or perhaps you may have sworn to it yourself?

Mr. BAER. And the items which it contains are the items called for by the Interstate Commerce Commission, and as stated therein, they are all correct. But it is the marshalling of the figures that often brings out a wrong result.

Com'r PROUTY. I want to find out in what respect the marshalling which your comptroller has done is a mistake. What is his name?

Mr. CAMPBELL. D. Jones.

Com'r PROUTY. I want to find out in what respect your controller has made a mistake in marshalling these figures.

Mr. BAER. I do not think he has.

Com'r PROUTY. You paid interest on your funded debt amounting to $3,326,687?

Mr. BAER. Yes, sir.

Com'r PROUTY. You paid interest on current liabilities of $507,824.55?

Mr. BAER. Yes, sir.

1854 Com'r PROUTY. You paid interest on real estate mortgages of $45,130?

Mr. BAER. Yes, sir.

Com'r PROUTY. You paid rents on leased roads of $3,419,330.66?

Mr. BAER. Yes, sir.

Com'r PROUTY. You paid taxes amounting to $501,196.25?

Mr. BAER. Yes.

Com'r PROUTY. You paid for permanent improvements $2,007,455? And there is an item charged of other deductions of $1,998,702?

Mr. BAER. Largely equipment rentals. The Reading Railroad does not own its equipment. It leases its equipment from the Reading Company, and those items—the principal item there as you will see if you turn to the Reading balance sheet of the Reading Company—income account on page 25, Reading equipment, you will find these items that the Reading Railway paid to the Reading Company, the Reading Company owning the equipment. The amount is $1,576,000, rent of equipment.

Com'r PROUTY. You think that might account for this item of $1,998,000?

1855 Mr. BAER. Yes, sir. And there are rents of the Delaware River wharves. Some of this property is owned by the Reading Company and used by the Reading Railway Company—the equipment, for example, the Delaware River wharves. There are quite a number of item' of that kind that make up that aggregate figure of $1,800,000 or $1,900,000. You will find that in adding it up the fixed charges will be $1,519,000. These reports are audited carefully and I have no doubt of their correctness.

Com'r PROUTY. This report shows that you put two million and something over into permanent improvements.

Mr. BAER. They might have called it that. The improvement account was $1,341,325. The insurance fund was $246,000, and equipment renewals $666,000, making an item of $2,253,503, which might have been treated in that item.

Com'r PROUTY. What were the nature of permanent improvements which you charged to income account?

Mr. BAER. They would be such as sidings to manufactories and yards—freight yards to a manufactory. For example, we are compelled to build a new freight yard out this side of Harrisburg on which
1856 has been expended already a quarter of a million dollars and it will cost a half a million dollars more. Then we are compelled at Pottstown to build a yard there for the relief of a furnace that
1857 has increased in capacity. We had not sufficient trackage, and growth of business at Pottstown compelled us to build. Every year we are adding, I should say, a hundred, at least a hundred, new sidings for manufactures, and we are renewing the bridges, we are taking down property, and old, weak bridges we are substituting with new ones, as at Reading we are doing that to-day; we are building a new bridge over the Schuylkill; the bridge was a good bridge, but it was too weak to carry the present weight of engine and it was considered that the factor of safety was nearly reached. Those are the items that go into permanent improvements. There are stations—for example, we are building a new station at Harrisburg at a cost of probably $150,000—those items of stations that are constant; it takes the utmost economy. It takes about two millions of dollars annually to keep up your road, the changing of bridges, the improving of tracks, the renewing of stations, and all that kind of work that is made necessary by increased population and increased growth of traffic. We can, in our system, not get along with less than two millions out of income to be devoted—I am speaking roundly—to things of that kind. The renewal of equipment has been a very heavy cost to rail-
1858 roads in the last few years; the old equipment is not worn out but it is too weak; the locomotives, the track power is not great enough, and you must substitute new locomotives and keep up the standard of your equipment; you destroy your cars and destroy your locomotives and substitute cars and locomotives of greater capacity. That is a heavy expense; as you see equipment renewals alone were $666,000 last year, and it will probably be more this year.

Com'r PROUTY. When you replace a bridge like that over the Susquehanna, did you charge—or the Schuylkill rather—do you charge the entire cost of that bridge to permanent improvements?

Mr. BAER. Undoubtedly, to permanent improvements; yes. We do not capitalize it; they may call it capital——

Mr. CAMPBELL. Permanent improvement is an expense account.

Com'r PROUTY. Well, permanent improvement might be an expense account and it might be——

Mr. BAER. We do not capitalize it; that will answer the question.

Com'r PROUTY. It adds to the actual value of your property?
1859 Mr. BAER. Relatively; yes.

Com'r PROUTY. It adds to the earning capacity of your property?

Mr. BAER. Yes.

Com'r PROUTY. Why shouldn't you capitalize it?

Mr. BAER. Well, bless you, we can not earn money now to pay dividends and keep on capitalizing. We would get into the condition of the English railways, for example, some of them that tried that found themselves in a pretty bad way. It would be the worst kind of railroad policy to charge to capital account the building of a new bridge for an old one, because the new bridge was stronger and better than the old one; if that were resorted to it would bankrupt all the railroads in the country, in this sense, that the capitalization would become so great that it would not be possible to earn money upon it. Wherever there is something absolutely new it is an addition that we capitalize.

Com'r PROUTY. When you take out an old bridge and put in a new bridge why shouldn't you capitalize the difference between the
1860 cost of the old bridge and the cost of the new bridge?

Mr. BAER. Because you would by that means get your capitalization so high that your credit would be destroyed and your securities would become utterly worthless, you could not borrow money in the market, you could not pay dividends on your stock—keep doing the utmost we can to keep down our capitalization, we are not able to pay dividends on stock. If we went on and attempted to increase that capital by charging things of that kind we not only could not pay dividends, but we could not pay interest on our funded debt and our credit would go to pieces. It would be about as bad financing as one could conceive of, and there is not a railroad in the country that ever tried that that did not come to grief, and any railroad that ever tries it will come to financial grief.

Com'r PROUTY. If you earn more money you have more money to pay interest and dividends with, don't you?

Mr. BAER. Well, that is a hypothetical case. Probably we will earn and probably we will not earn more money. Here is a bridge over which you transport so much traffic; it is too weak and you put a new bridge there that takes the place of that other bridge relatively; probably
1861 you can do more busines upon it, but that is uncertain; it is uncertain as to profits as to whether you make more *more* out of the new bridge than out of the old, but the safety of the structure and the general business requires it to be replaced. I do not believe that a gentleman who owns a house, every time he puts a new roof on it adds the charge of the new roof to the cost of the house, or every time he paints it adds that charge to the cost of the house.

Com'r PROUTY. Do you call that a permanent improvement?

Mr. BAER. Permanent, yes, in the sense that we use the term here. We use that term "permanent improvements" to distinguish that term from the ordinary repairs and replacements that are going on. We take up a tie, a worn-out tie, and we put in a new one; we do not call that a permanent improvement at all; but when we do something that is permanent and intended to be permanent, as the rebuilding of a bridge or the building of a station, we call that for convenience of accounting a permanent improvement.

1862 Com'r FIFER. On what kind of improvements would you base additional capitalization?

Mr. BAER. I can answer that by giving you our practice. For example, we built a belt line around the city of Reading to relieve the con-

gested traffic of the city of Reading. That was all new capital. We organized a belt-line company and issued stock and bonds. We are building a bridge and a small line at Norristown. There is an old wooden bridge that connects the Reading Railway proper at Bridgeport with the Germantown and Norristown at Norristown. Now, then, we are building a small line of railway across the river, building a new bridge to connect above. Now, that is a new company and a new capital. That is not charged to expense. In the same way we are building a line of railroad in Philadelphia from a point this side of Wayne Junction to a point at Neshaminy Falls, a distance of, say, twenty-five or twenty-six miles—twenty-two miles I think it is—now, that is all new capital, you see. Instead of building a third and a fourth track
1863 on the line, what we call our Bound Brook line, we are building around it, and that is all new capital, new company, new stock, and new bonds, and then the Reading will lease it. That is all put into new money. Now, that describes the kind of thing that we do. That we charge to capital account.

Com'r PROUTY. On page 27 of our annual report—

Mr. BAER. Of your annual report?

Com'r PROUTY. Of the annual report which the Congress of the United States has required you to make to the Interstate Commerce Commission.

Mr. BAER. Yes; I regret that I haven't it before me.

Com'r PROUTY. Well, I can give you one.

Mr. BAER. Thank you.

Com'r PROUTY. You will notice there is an itemized list of the different things for which a railroad company can spend money, and it includes about all the things for which it can expend money, and railroads are required to set down opposite each one of those items the amount of money they have spent for each particular thing, so that the Commission can judge when they receive your report whether it is properly
1864 a permanent improvement or whether it is properly an operating expense. Now, your company do not itemize at all; it simply puts down there two gross items, one of a million three hundred and forty-one thousand dollars and another of five hundred and fifty-two thousand dollars. Now, according to your testimony, part of that might be properly charged against operation of the road and part of it would be properly charged against permanent improvements of the road?

Mr. BAER. Well, but do not you think that we have the right to determine that? We make a report to the Interstate Commerce Commission of what we can do. Has the Interstate Commerce Commission jurisdiction to say how we shall charge the expenses of the Reading or of any other railroad system? We give you the information as to what we have done, but when that information has been given you have no jurisdiction to say that we ought to charge this, not to operating expenses, but to permanent improvements and invest it in capital, have you?

Com'r PROUTY. We do not undertake to say, of course, how a railroad company shall invest its money.

Mr. BAER. Or spend it either.

1865 Com'r PROUTY. Nor shall we undertake to say how it shall keep its accounts. But Congress has provided that a railroad shall make certain returns to the Government so that we may know what

is being done with its money, and whether its rates are too high, and as we spend the money it is your duty to inform us exactly what you have done with that money and exactly how you have expended it.

Mr. BAER. Well, if you had sent this back to me—I do not pretend that I can supervise all these reports. I think I am a pretty busy man, but if I undertook to act as comptroller and freight agent and everything else in the great Reading system I would make a fool of myself, but if this had been returned to me with the information that the details should be given as you desire them, I would have ordered it to be done, and if the Commission desires every one of these details to be given I will hereafter order it to be done. I want my companies to comply strictly with every requirement of every act of Congress that bears legitimately on our business.

Com'r PROUTY. As it is now you return an item of two million
1866 dollars, ten per cent of that capital stock, as expended in permanent improvements, and your testimony as I understand it now is that those are only permanent improvements in the sense of being permanent constructions?

Mr. BAER. Yes, that is right.

Com'r PROUTY. They are not necessarily additions to the value of the property?

Mr. BAER. That is right exactly.

Com'r PROUTY. They are simply permanent constructions?

Mr. BAER. Yes, and they are all charged to income account as permanent improvements. Now we keep our books, I suppose, largely to suit your requirements; the accounting officers have evidently used that word "permanent improvement" in the belief that anything that could be charged to income account, you know, was in the nature of a permanent improvement. I see it might lead to a misunderstanding that reconstruction may be a permanent improvement, but that others might think that by permanent improvement it meant something new in the way of addition, as an additional railroad or something of that kind.

1867 Com'r PROUTY. Your company earned in the year 1898 twenty-one million dollars—the Philadelphia & Reading Railway Company. That company was organized in 1897, was it not?

Mr. BAER. Reorganized in 1897.

Com'r PROUTY. It was the Philadelphia & Reading Railroad Company previous to that time?

Mr. BAER. Yes.

Com'r PROUTY. In the year 1898 it earned in round figures twenty-one millions of dollars, and last year it earned twenty-nine millions of dollars?

Mr. BAER. Yes.

Com'r PROUTY. Do you think that additions to the rolling stock or the roadway which enabled it to earn that additional eight millions should be paid for out of income?

Mr. BAER. Oh, they weren't the things that enabled it to earn that additional. That was the increase largely of merchandise and bituminous coal traffic. Since then the bituminous coal traffic on our road has more than doubled and the merchandise traffic has come to be

more than one-half of our traffic, whereas it used to be only
1868 twenty or thirty per cent.

Com'r PROUTY. You require additional cars; you require additional locomotives, I expect.

Mr. BAER. If I had the five reports I submitted here I could give you accurate information on that. You will see that our increase in equipment and expenditure is enormous since our reorganization.

Com'r PROUTY. Have you made that out of capital or out of income?

Mr. BAER. Part of it, as you will see, has come from capital. We have a million and a half mortgage bonds under the reorganized plan which we get every year, and that is expended in capital. That is new capital. And then there are many other loans made of various kinds, as car-trust loans and things of that kind. I could only get at that by taking the report, which I am sorry is not here; I supposed it was here, of 1898, and then the report of 1902, and you can see from that what the increase in the indebtedness of the company has been and what the increase in the value of equipment has been, and new things, as, for example, here (referring to paper) you can get at our system
1869 whether it is right or wrong; the sum of $1,341,000 was spent during the last fiscal year for improvements and charged to expenses, and then it gives the items of improvements on page 10. On page 13 we give an account of the increase in equipment, showing that the increase of equipment was from $16,990,000 to $27,949,738, and the floating equipment was increased from $1,439,000 to $2,947,000, making a total increase of $12,466,000, and the means to pay that—I will say the funds to pay this—were from sales of securities, $3,564,262.77; from the reorganization committee, $91,000—that was the surplus of money left in the committee's hands; of car trusts, $8,921,540—that is for the sale of car-trust securities; and by Wilmington & Northern Railroad equipment lease, $347,000, making the total $12,924,000, less $457,000 on account of Philadelphia & Reading Railway Company equipment, taken out of service and to be replaced; that is, that much equipment had been destroyed by the railway company and had to be replaced under the terms of the lease. Now that gives you an idea of our method of stating accounts. That is the capital; as you see, all those sums were taken out of capital. We always state in our reports exactly
1870 what we take out of income. If anyone will take the trouble to examine it they will find exactly what we have done.

Com'r PROUTY. Does it make any difference, Mr. Baer, to the Reading Railroad what the freight rate is on coal which you own and sell?

Mr. BAER. Why does it? Why shouldn't it? The railway company don't own the coal. The Coal & Iron Company owns the coal, but it don't own all the coal; not all the anthracite coal shipped from the railroad comes from the Coal & Iron Company's collieries.

Com'r PROUTY. I understood you to say that the Reading Company owned all the stock of the Philadelphia & Reading Railway Company.

Mr. BAER. It does—twenty millions of stock.

Com'r PROUTY. And owned all the stock of the coal company?

Mr. BAER. Yes.

Com'r PROUTY. The coal company mines a certain amount of coal?

Mr. BAER. Yes.

Com'r PROUTY. It buys a certain amount of coal?

Mr. BAER. Yes.

1871 Com'r PROUTY. Does it make any difference, now, to the Reading Company what the freight rate is upon the coal which the coal company either mines or buys?

Mr. BAER. Why, if the freight on the Reading Railway Company is reduced the Reading Railway can not earn enough money to pay its charges. Here are the mortgages and the outstanding securities of the Reading Railway Company, and whilst the popular idea is that there is no real difference between these companies in point of law and in fact, there is; they are a different class of security holders, so far as the securities of the company go, and they are distinct corporations, existing under the laws and the constitution of the State of Pennsylvania. Whether it is wise or not is a thing that is academic and need not be discussed. The fact is that they are three distinct corporations, acting, one as a transportation company, the other as a mining company, and the other as a holding company, enabled to take properties for the benefit of the general system, which the other companies could not do. Now, if you reduce the rates to the railroad you can make it impossible for the railroad company to pay its fixed charges. Neither the coal nor

1872 the iron company nor the Reading Company are responsible for the fixed charges of the Reading Railway Company. Of course it might be said that the coal & iron company could add to the price of the coal it sold what you might take off of the rate of freight, but that would only improve the securities of the coal & iron company and enable it to declare dividends to the Reading Company and would not help the railway company.

Com'r PROUTY. My question does not have reference to the railway company nor to the coal companies, but to the Reading Company, which owns the entire capital stock of the railway company and the entire capital stock of the coal company. Now, does it make any difference to the company what the rate on this coal is?

Mr. BAER. Why, I think so, very much. The Reading Company is interested in having the securities of the railway company maintained and pay the fixed charges; it is not a grantor upon them, upon the railway securities; in some instances it is, but not on——

Com'r PROUTY. Whatever the railway company loses in the transportation of coal the coal company gains in profits?

1873 Mr. BAER. That is on the assumption that if you reduce the rate of freight that the price of coal could be advanced correspondingly. I doubt it. I doubt that.

Com'r PROUTY. You think, then, that the freight rate, if reduced, would have the effect of reducing the price of coal?

Mr. BAER. Why, I think it probably would; that ought to be the natural effect. I am not prophesying as to what might be done. For example, we might take the position that so far as interstate traffic went that we sold so little, comparatively, outside of the State of Pennsylvania that it would be more profitable for these great Pennsylvania Railroad corporations to encourage manufacturers to settle in Pennsylvania, and to keep this coal in Pennsylvania. Things of that kind might happen if the rate were made so that it would be unprofitable for the railway com-

pany to transport beyond the boundaries of the State. I do not think that would happen, but this will not happen: That the great State of Pennsylvania is going to allow her great corporations and her great coal and mineral deposits to be spoliated for the benefit of the rest of the United States. We want to deal justly and fairly in the reduction.

1874 Com'r PROUTY. Well, suppose the rate of coal were to be reduced 25 cents a ton. In your judgment, what effect would that produce on the price of coal?

Mr. BAER. Oh, I can not tell. The price of coal is regulated by the law of supply and demand, largely, and I can not prophesy as to what the effect might be. I do not know whether we could increase the price of coal or not.

Com'r PROUTY. Well, what would prevent your increasing the price of coal?

Mr. BAER. Well, we do not control all the coal. There is a great quantity of coal shipped that we do not control that other people control, and the other dealers in coal might reduce the price of coal so that we would have to produce—we can not arbitrarily fix the price of coal. It is a commercial problem that varies.

Com'r PROUTY. Well, now, it appears that at the same time this last spring the price of coal was fixed by your company and by all other companies at at certain figure—$5 a ton?

Mr. BAER. Yes; that is, certain sizes were fixed at that.

1875 Com'r PROUTY. How is that?

Mr. BAER. How is that?

Com'r PROUTY. How is that done?

Mr. BAER. Because there was a scarcity of coal in the market and we could fix that price on it and sell it in competition at that time with bituminous coal where the price had gone up proportionately higher in many sections than anthracite. Those are market conditions that vary from time to time; if with the general attack that is made on all industrial operations in the United States this era of prosperity will be destroyed, then I do not know at what price coal, either bituminous or anthracite, can be sold; there are two many factors in a problem of that kind to enable me to determine from day to day what will happen in the future.

Com'r PROUTY. You were able to fix the price at five dollars a ton because the demand warranted it?

Mr. BAER. That is it exactly.

Com'r PROUTY. Because the production of anthracite coal was not large enough to glut the market?

Mr. BAER. Well, I would answer that by saying that after the

1876 mines had been idle through a strike for six months and scarcity of anthracite coal existed, there was not enough to supply the market, and the demand was active, and it was possible, therefore, for the time being to advance the price because there was a demand for it, that is the only answer I believe I can give.

Com'r PROUTY. Several witnesses have testified that that price might have been advanced to $6 a ton.

Mr. BAER. I think it could have been. I think it could have been.

Com'r PROUTY. That is to say, there are a certain number of people who use a certain amount of anthracite coal in this country who will pay $6 a ton for it?

Mr. BAER. I think so.

Com'r PROUTY. You say anthracite is competitive with bituminous coal?

Mr. BAER. Yes, sir.

Com'r PROUTY. Do you think the competition between anthracite coal and bituminous coal fixes the price of anthracite coal?

Mr. BAER. Why, it helps to fix it.

Com'r PROUTY. Speaking now of the prepared sizes and not
1877 of the smaller sizes used for steam purposes, and therefore directly competitive with anthracite coal, do you think that domestic anthracite coal comes into competition with bituminous coal?

Mr. BAER. Not largely, but you must remember that anthracite coal as a domestic fuel is only used in the East, and in some of the cities of the West. The people of this State, and west of the Alleghenies, except in the cities, use bituminous coal for fuel; it is simply a genteel fuel; the masses in the United States use bituminous coal for fuel in domestics.

Com'r PROUTY. Where are the prepare dsizes of anthracite coal mainly used—in what part of the country?

Mr. BAER. In the cities.

Com'r PROUTY. Do you know how many tons of anthracite coal, prepared sizes, are sent into New England?

Mr. BAER. I can not give you those statistics. Mr. Ruley has all of those things. I can get them for you, but I could not answer off hand.

Com'r PROUTY. In your opinion, how much would it reduce the consumption of the prepared sizes of anthracite coal if the price were advanced to $6 a ton?

Mr. BAER. Now?

1878 Com'r PROUTY. Permanently.

Mr. BAER. I should think it would reduce it very largely, how much I do not know, but people would not pay permanently any such price for anthracite coal, if they could get bituminous coal at a much lower rate. We can not guess at conditions of that kind. I do not believe, for example, that we will be able to maintain this rate, this price of anthracite coal; I have no idea it can be maintained permanently.

Com'r PROUTY. Why not?

Mr. BAER. Well, because the market conditions will be such that we can not market it; people won't use it; they will adapt themselves to the use of cheaper fuel.

Com'r PROUTY. The market would take a certain number of tons of prepared sizes at $6 a ton, would it not?

Mr. BAER. Why, I should think so. There are some people that would pay most any price for anthracite coal, if they are people of means. There would be a certain portion of the community that would pay the price.

Com'r PROUTY. Do you think a dollar a ton would material reduce the consumption of anthracite coal in New England?

Mr. BAER. Yes.

1879 Com'r PROUTY. And it would materially reduce the consumption of anthracite coal in the city of New York?

Mr. BAER. I think so.

Com'r PROUTY. So that it would be for your interest as a producer of anthracite coal to make a less price rather than to maintain a higher price?

Mr. BAER. It is to our interest to market anthracite coal at a fair profit. It is not to our interest to mine and transport anthracite coal at a loss. Neither is it to our interest to put a profit upon anthracite coal which is unjust and unfair and will yield a greater profit than is ordinarily realized in the business of this country.

Com'r PROUTY. Why not?

Mr. BAER. Because it is an article of necessity, and no great corporation would be justified in taking advantage of the necessities of the people to extort from them, whenever the anthracite business is fairly remunerative in its transportation and in its sale of coal and in the prices realized from coal, to give the stockholders and the security holders a fair return on their investment; that, in my judgment, is the measure of price. I took that ground last winter and tried to maintain it.

1880 Other gentlemen think that I am all wrong; that any commodity is entitled to receive any price at which it can be sold in the market. I believe in it, but I do believe that in a matter so vitally affecting the public that the line is drawn just where I put it; that the coal companies and the transportation companies are not to receive extraordinary profits from their business, and that they are to receive from that business the ordinary remuneration which is common to general business interests of the country, and that when they have received that, and attempt to get more, then the public has a right to clamor. No such condition has existed in the anthracite coal business in my day, and I hardly hope to live long enough to see any such new condition of things.

Com'r PROUTY. So that in your opinion it is your duty and the duty of these other coal roads to put such a price on anthracite coal as will pay a fair return on the investment?

Mr. BAER. That is my judgment.

Com'r PROUTY. And that and not commercial conditions and not competitive conditions should regulate the price charged for coal?

1881 Mr. BAER. No; I do not say that. That is only one side of the problem. Commercial and competitive conditions do affect our ability to do that; it may be that we can not do it, but I am trying to fix the standard at which we aim; what we are aiming to do is to get a fair return on our investment, and whether we can do that depends upon competitive and commercial conditions. In the case of the Reading system it has never been able to do it.

Com'r PROUTY. How much a ton at New York Harbor do you think ought to be charged for anthracite coal to pay a fair return on the investment of the Reading road?

Mr. BAER. Nothing short of the price we are now charging will enable us to pay it.

Com'r PROUTY. And you think that would?

Mr. BAER. I think that if the consumption can be kept up normally, so that we can market say ten million tons and maintain the system, the basis of price at $4.50 as the base and going up to the fall months to $5.00 for the domestic sizes with the necessary reductions that we will

have to make of other sizes for the manufactures along our line,
1882 I think that we will be able to earn four per cent. That is a case that has not been demonstrated. I can tell you if things continue at the end of the year, because it is so very uncertain, there are so many factors entering into this business; just when you think your mines are on a paying basis a flood will come and destroy a lot of your mines, or a strike will come, and many other things enter into the conduct of the business that can not be for'seen, and it has been an enormously troublesome problem to handle the anthracite coal districts. I see Mr. Olyphant says it has not been managed well in the past. I suppose it has been managed as well as circumstances would permit it to be managed, but I can not prophesy or foretell, because of the many contingencies that may arise, as to what earnings we can make.

Com'r PROUTY. Suppose it should turn out, Mr. Baer, that $5 a ton is not enough or $4.50 a ton is not enough, do you think you could advance fifty cents a ton more?

Mr. BAER. I do not know. I do not know. I doubt it very
1883 much. That depends upon the general business conditions of the country. I don't know what is in store for us, and I do not know what those business conditions can be. Fuel, like everything else, must bear a relative value to other things, and I do not believe anybody can arbitrarily fix the price of bituminous coal or of anthracite coal or of any other commodity in this country.

Com'r PROUTY. Is much coal tributary to your line which is also tributary to other lines of railroad?

Mr. BAER. No; they have a map here to show the location of our system.

Com'r PROUTY. That shows the location of your system, but not very well the location of the different collieries, and it does not show the location of other systems.

Mr. BAER. We will have a map here of the location of the collieries——

Mr. CAMPBELL. Would you like to have that map displayed now?

Com'r PROUTY. No; I simply ask him to state, from his general information, whether much coal on his line could also be brought to market by other lines.

Mr. BAER. Very little.

Com'r PURDY. Now, taking the other coal roads like the Erie,
1884 Pennsylvania, and Lehigh Valley, is it true, generally, that anthracite coal could be moved to market by more than one railroad?

Mr. BAER. Well, only in some particular instances it is true. Most of the collieries are located on one railroad, and in very few instances could any of the other railroads build into them. Now, in some cases, traffic is taken over other railroads and delivered—for example, on the Jersey Central one of our Pennsylvania lines is used to take the coal from one of our collieries, which runs over their lines, and deliver it to us; but it is the colliery that controls.

Com'r PROUTY. So there never has been much competition between different railroads in the transportation of this coal?

Mr. BAER. No; in the competition for transporting, itself; no. No; there has not been. There is all the time—for example, the Pennsyl-

vania Railroad is building into a colliery on our line up in the Schuylkill region; I only heard of it the other day, and it will take that tonnage away from us. There are cases of that kind. Generally it is not so.

Com'r PROUTY. But the competition has been in the price of coal?

1885 Mr. BAER. It has been in the price. You take the Coxe Brothers, there all that traffic was taken away from us by the Lehigh Valley. We had built extensively on the line to the Coxe Brothers' collieries, and during the receivership all of that traffic was taken from us and taken up by the Lehigh Valley, and it is possible and is going on in a small way all the time, but not to any great extent, because each of the companies controls the coal companies.

1886 Com'r PROUTY. Under this system by which the railroad company is at once a dealer in coal in effect and a transporter of coal, it has been to the interest of the railroad company to maintain a high rate on coal from a colliery on its own line to market, has it not?

Mr. BAER. It is to the interest of a railroad company to get the highest rate it can.

Com'r PROUTY. It is ordinarily to the interest of the railroad company to make a rate that will enable the traffic to move?

Mr. BAER. Yes, sir.

Com'r PROUTY. In the case of the coal traffic of your competitor, it is to your interest to stop the movement of it, is it not?

Mr. BAER. No; because with the exception of New York, where our surplus goes, there is very little competition—other lines do not reach to our markets. Our valuable markets are on our line.

Com'r PROUTY. I am talking about independent operators on your line.

Mr. BAER. These gentlemen are pretty well taken care of. I do not hear them complain.

1887 Com'r PROUTY. You have heard complaint in the past about transportation, have you not?

Mr. BAER. Yes; I have heard complaint, but not recently. I do not know who is complaining—no party in interest.

Com'r PROUTY. The system under which the railroad company is the coal dealer and the coal transporter has resulted in their buying the coal, as a rule, has it not?

Mr. BAER. I can not accept your statement of the question. I repeat that the Reading is not a dealer in coal, and therefore I will not accept the form of your question so as to answer categorically.

Com'r PROUTY. The price of coal at present is $4.70 in New York, is it?

Mr. BAER. $4.70 on domestic sizes.

Com'r PROUTY. Now, let us assume for a minute that it costs $1.70 to mine that coal.

Mr. BAER. I can not assume that. It costs a great deal more.

Com'r PROUTY. Well, for the purpose of the illustration, let us

1888 assume that it costs $1.70 to mine the coal, and that it costs $1 to transport it. There is a profit of $2 to the Reading Company?

Mr. BAER. If all the coal was that particular coal; yes.

Com'r PROUTY. $2 to the Reading Company. How much would come from the transportation and how much from the mining?

Mr. BAER. I decline to make any such calculation, because it is not based on any facts. The cost of mining coal, irrespective of royalty to our company, is about $2 a ton, and that includes only royalties we pay leased mines. Most of the coal is mined from mines on our own line. The price at which domestic coal is sold is not the average price that we receive for coal. We have endeavored to explain time and again that $4.50 or $5 is not the price of all the coal mined. It is the price only of a particular variety, and every pound of coal we mine costs us $2 a ton, and some of it is sold as low as 65 cents. Therefore we lose on that.

Com'r PROUTY. I am not at all concerned now with the reasonableness of the price of coal or the reasonableness of the rate. I assume that the price is entirely reasonable; but, for the purpose of illus-
1889 tration, let us assume that it costs $1.70 to mine that coal and $1 to transport it to market. That is $2.70 a ton. If you sell a ton for $4.70, the Reading Company makes $2 out of it and the railway company makes 55 cents a ton, and the coal company $1.45 a ton? Am I right?

Mr. BAER. I suppose your calculation is right, but I do not assent to such a deduction.

Com'r PROUTY. Suppose the rate on that coal was reduced to $1 a ton. It now costs $1.70 to mine the coal and $1 to transport the coal to market. The entire cost is still $2.70. You still make $2 a ton, don't you?

Mr. BAER. Oh, no. On such a calculation paper is patient; you can make any calculation. Taking the two companies, you can see here what we make. (Referring to reports.) Here is what the Reading Company and the coal company make—$4,686,000. There you have all the business of the coal and iron company, and the Reading Railway Company, and the Reading Company itself. I can not divide it and tell you in any practical way how much the railroad company makes on the transporta-
tion of a ton of coal, nor can anybody. I can tell you on the cost
1890 of mining a ton of coal. That is actual. It costs $2. The actual royalty is 30 cents. That is $2.30; but when you try to divide it up you are guessing. The average can be arrived at only by taking it all.

Com'r PROUTY. I am not trying to show that your railroad rate or that the price for coal is unreasonable. I am simply trying to show that it is a matter entirely immaterial to the Reading Company whether you make the rate $1 or $1.50 a ton.

Mr. CAMPBELL. I think, Mr. Commissioner, that this is an unfair examination, because you have omitted the interest on $65,000,000 of securities that underlie any interest the Reading has, some running at 7 per cent, some at five, and some at four. You must take that out before your question is pertinent.

Com'r PROUTY. I do not understand that this Commission has anything to do with the Reading Company. What I am trying to show now is that it is entirely immaterial to the Reading Company what the freight rate is.

Mr. CAMPBELL. It is not immaterial that the railway company should earn interest on $65,000,000.

1891 Mr. BAER. I say it is material, and that is my answer. The classes of security holders are not identical, and they are independent corporations so far as operation goes, but not so far as stock control goes, and we are bound in duty to the different classes of people interested in the several companies to conduct the business separately, otherwise one class of security holders would suffer. The Reading Railroad Company has a class of security holders, a large number—there is $67,000,000 of underlying mortgage, and we must earn interest on that. Those people are not common with the stockholders of the Reading Company per se. Therefore, my answer is based on that proposition, that there is a distinction, a difference, and that it will make a difference to the Reading Railway Company to reduce the price of freight.

Com'r PROUTY. The Reading Railway Company?

Mr. BAER. And the other companies.

Com'r PROUTY. Suppose, as Commissioner Fifer suggests, there was no difference as to the security holders.

Mr. BAER. If the Reading Company and the railroad company and the coal company were all identical, the stockholders having com-
1892 mon interests, then a reduction on the price of freight might, if market conditions would warrant, be offset by an increase in the price of coal, and one would balance the other. Undoubtedly that must be so.

Com'r CLEMENTS. I think, Mr. Baer, you said there had been no general increase of rates since you had been president. I do not know how long that has been.

Mr. BAER. Two years. I think there was an increase this spring of ten cents a ton on bituminous coal that does not originate on our road. Generally there has been no increase of rates on our system.

Mr. CLEMENTS. Your road adopts the official classification, does it not?

Mr. BAER. Yes, sir.

Com'r CLEMENTS. Do you remember that on the 1st of January, 1900, Classification No. 20 went into effect, and that carried with it an increase on something like 800 articles of freight?

Mr. BAER. No, I do not know the fact. I was not president then and did not pay any attention to it. Our principal business is in our local territory, and we have very little to do with the through
1893 rate. We have to take what the big companies connecting with us give us. They generally make the rate and we must be content to take what they give us.

Com'r CLEMENTS. The rate was increased on soap, hay, and many other articles by changing the classification?

Mr. BAER. I am not familiar with that.

Com'r CLEMENTS. The tariff sheets will show all that.

The CHAIRMAN. Mr. Shearn, do you desire to ask Mr. Baer any further questions?

Mr. SHEARN. I did, but if he has to go away I do not like to detain him.

Mr. BAER. Well, I am anxious to get away.

Mr. SHEARN. I will not detain you long. You just stated, as an illustration of the competition, that the Lehigh Valley had taken Coxe Bros.' business away; that they built in there. You know it is a fact, do you not, that the Lehigh Valley did not build in to Coxe Bros., but that Coxe Bros. built out to the Lehigh Valley?

Mr. BAER. I do not remember the details. I know that the Reading lost the traffic. It was when I was general counsel, and general
1894 counsels only attend to the things turned over to them.

Mr. SHEARN. Have not you found out since that they built the Delaware and Schuylkill out to the Lehigh Valley and got to tide vater over the Lehigh Valley by paying a trackage?

Mr. BAER. I know the general proposition. We built in to them, I remember, years ago, and we lost the traffic.

Mr. SHEARN. You said that you did not know whether you could increase the price of coal to the amount the Commissioner asked you about. Your counsel said yesterday, as an admission on the record in objecting to calling any other witnesses on the subject, that "this Commission know now as well as they will if they call a thousand witnesses that the price of coal to-day is approximately $5 a ton, that it could be $8 or $10 if the operators demanded that price"——

Mr. CAMPBELL. I did not say that.

Mr. BAER. I want to tell you that I was a lawyer so long that I do not want to establish a rule of making a client responsible for the arguments of his counsel. I do not know what Mr. Campbell said.
1895 If he thinks that he has a right to say it, I do not think so.

Mr. SHEARN. You said there was very little competition in your principal markets along your line?

Mr. BAER. No, I did not.

Mr. SHEARN. Well, I understood you so. Is not that the fact in Philadelphia and those other points along there?

Mr. BAER. Oh, no; you misunderstood. I said little competition up in the region of ; that it was a minimum, but in the markets there is competition everywhere. In Philadelphia the Lehigh Valley, the Lehigh Navigation Company, and the Pennsylvania Railroad are in competition with us. In Reading the Pennsylvania Railroad competes with us. All along the Schuylkill valley there is that same competition. In the Lehigh Valley region the Jersey Central and the Lehigh Valley compete with us in that whole territory. I do not know of any large points where the other companies do not sell coal. Our facilities in Philadelphia are such, because of the number of coal yards we have, that, of course, we have the bulk of the business in Philadelphia; that is a question of facility of delivery.

1896 Mr. SHEARN. You mentioned the large cost of bringing coal to gathering points as one reason for charging more for anthracite coal. Have you ever been able to estimate accurately or approximately how much per ton that gathering charge ought to amount to or does amount to?

Mr. BAER. No. I think it is fixed at 30 cents, is it not, Mr. Henderson?

Mr. HENDERSON. Yes.

Mr. HEARN. A ton?

Mr. BAER. Yes, sir.

Mr. SHEARN. There is another item I think you mentioned, or which has been mentioned: The cost of terminals, terminal charges, and interest on money that has been used to put up the large docks, etc. Have you figured out what that amounts to or should amount to?

Mr. BAER. No, sir.

Mr. SHEARN. It was testified to by Edward H. Mead, former president of the Pennsylvania Coal Company, that the entire cost, including interest on investment and everything else at the terminal, did not exceed ten cents a ton. Is that in accordance with your experience?

1897 Mr. BAER. I should not think so. I think it is much more than that. I can not verify my belief by going into the details of figures, but that would certainly be surprising. I say that, because I had a careful examination made of the cost of handling and picking up coal at the storage yards, which they told me was very low, and when all the items were marshalled I found that it was 26 cents a ton added to the cost. It is so easy to make calculations and so easy to omit factors that go into them that I can not express any opinion except to say that I am sure that that is too low. My general observation would teach me that that would not cover it at all. It would not cover the shifting.

Mr. SHEARN. The switching, etc.?

Mr. BAER. Yes, sir.

Mr. SHEARN. It appears that the Pennsylvania Railroad brings coal into South Amboy from Shamokin, a distance of 173 miles, for $1.40. Why can not you bring coal from the same region to about the same point at the same price?

1898 Mr. BAER. I do not know anything about that. We do not go to South Amboy.

Mr. SHEARN. Do you know of any reason why you can not carry coal as cheaply per ton per mile as the Pennyslvania Railroad?

Mr. BAER. I suppose we can. In the first place, I doubt if that is the correct rate. I do not know the difference between South Amboy and what addition there would be to the water rate. I can not answer your question.

Mr. SHEARN. Do you know of any reason why your road can not carry anthracite coal from the region in Shamokin to New York Harbor points as cheaply as the Pennsylvania Railroad can?

Mr. BAER. I do not. Of course, I do not. I do not admit that we can not do things as well as the Pennsylvania Railroad if we try to.

Mr. SHEARN. Now, bearing in mind also that the rate of the Pennsylvania from Wilkesbarre to South Amboy, a distance of 237 miles, is $1.40, can you give any reason why you should charge $1.85 for transporting anthracite from Pottsville to Washington, a distance of 231 miles?

1899 Mr. BAER. You will have to ask the traffic department. I will not express any opinion on those details of rates at all.

Mr. CAMPBELL. I would like to ask Mr. Baer a question, which I think may explain the whole thing. Is it not the case that with the Pennsylvania Railroad the anthracite business is a small thing, whereas with the Reading it is the principal thing?

Mr. BAER. I say I do not know what the factors are, and therefore I can not tell. I have said that I do not think that rate is correct.

Mr. SHEARN. It was testified to yesterday here by a man that pays it, and it is certified by the Commission as the published rate on file.

Mr. BAER. I do not know what the exceptional circumstances are.

Mr. SHEARN. Your tariff from Shamokin to Trenton is $1.70, as certified by the Commission. Do you know of any reason why you should charge $1.70 for 175 miles to Trenton when the Pennsylvania Railroad charges $1.40 for 173 miles to South Amboy?

1900 Mr. BAER. I can give no information on it. I do not know the different conditions.

Mr. SHEARN. Do you know why, when you bring coal to New York for $1.55, you charge $1.70 to bring it to Trenton?

Mr. BAER. Yes; I suppose the one reason for that is that our surplus goes to New York, and New York is favored in everything—in harbor, in conditions, in money. It must be the favored spot.

Mr. SHEARN. You know of no reason why you can not carry anthracite coal as cheaply per ton per mile as any of these other respondent companies, do you?

Mr. BAER. I simply say that I do not know the conditions of the other companies. They may be able to carry coal cheaper than we can, taking all conditions into consideration. I only know that at the rates we have been carrying it we have not been able to make a profit. That is the best evidence that the rates are fair and just.

Mr. SHEARN. Is it not a fact that the capitalization and funded debt of the companies in the Reading system were larger after the reorganization than they were before?

1901 Mr. BAER. No; except to the extent that new money was put in. The actual securities were scaled down and twenty-six million dollars in cash, or twenty-eight millions—in that neighborhood—were paid in by the security holders and stockholders in the reorganization. Assessments were made on all the stock and all the deferred income bonds, and the actual capitalization, therefore, is not as great as it was, except in so far as it may have been increased by the new money paid in. My recollection is that the assessment amounted to twenty-seven million dollars, but the exact figure I can not recall.

Mr. SHEARN. Do you still insist that if your rate were reduced twenty-five cents a ton that would represent a gross loss to the Reading Company of $2,750,000 a year?

Mr. BAER. It is a matter of arithmetic—twenty-five cents a ton on eleven million tons, I think. If you reduce that, unless I have multiplied wrongly, it produces that sum.

Mr. SHEARN. Don't you know as a fact that it makes absolutely no difference whatsoever in the amount that is availabe to the Reading Company or to the Philadelphia & Reading Railway Company whether your rate is increased or decreased twenty-five cents a ton?

Mr. BAER. I submit to the Commission that I have answered

1902 that fully.

Mr. SHEARN. Do you recollect testifying at one of the early hearings here that you appropriated such an amount as suited your convenience out of the treasury of the Philadelphia Coal & Iron Company——

Mr. BAER. I do not understand that. It sounds idiotic.

Mr. SHEARN. I will read it to you. I was asking you about the debt of seventy-nine million dollars of the coal & iron company and your making a charge of one and one-eighth per cent per annum against that company as interest on that debt. You said:

"We do not have any fixed sum. The rate of interest the coal & iron company pay depends upon the yearly earnings of the company. We have no agreement as to a fixed rate of interest. It just suited our convenience to appropriate that much out of the assets of the coal & iron company—out of the profits, I mean, if the coal & iron company—for a given year; but we may, if we earn enough to pay three or four per cent, probably charge three or four per cent interest. That is an open question."

1903 Mr. BAER. That is perfectly plain, is it not? What do you want to know now?

Mr. SHEARN. I want to know if you do not appropriate more or less out of the receipts of the coal & iron company as suits your convenience, irrespective of freight charges?

Mr. BAER. Freight charges have not anything to do with it. The coal & iron company at the end of the year are found to have made a profit. Then it is a question how much of the money it can spare from the working capital to pay the Reading Company on the seventy-nine million dollars. If it can pay two per cent, that would be the rate, and if it can pay one per cent, that would be the rate.

Mr. SHEARN. It all depends on what the coal & iron company realize on the sale of the coal?

Mr. BAER. On its earnings, of course.

Mr. SHEARN. On the amount they receive for the coal?

Mr. BAER. On the net earnings of the coal & iron company.

Mr. SHEARN. And it has no other resources except what it gets from the sale of anthracite coal?

1904 Mr. BAER. Generally, yes. They have some other interests.

Mr. SHEARN. That being the only available asset out of which it pays these freight rates——

Mr. BAER. These are not freight rates.

Mr. SHEARN. It must come out of what the coal & iron company gets——

Mr. BAER. The coal & iron company pays its rates.

Mr. SHEARN. Out of what it makes selling coal. There is no other available source for those payments, is there?

Mr. BAER. Certainly not.

Mr. SHEARN. It depends—what the Reading Company, or the Reading Railway Company gets for freight charges—it depends solely upon what the Reading Coal & Iron Company is able to pay out of the profits of selling coal?

Mr. BAER. No. If the coal & iron company could not pay its freight rates, it would have to stop business. The coal & iron company deal with the railway company as any other concern deals with it. It sells coal, transports it, and pays the freight rate. If we ever reach a

1905 time when the price of coal is so low that the coal & iron company can not pay the usual freight rate on its coal, it will have to suspend selling coal, because it will be unprofitable business, and

under this management we do not propose to do unprofitable business if we can help it.

Mr. SHEARN. What you are able to charge and get out of the coal & iron company for freight rates would depend on what the coal & iron company would be able to get for coal, would it not?

Mr. BAER. No; the coal & iron company pays the regular freight rate out of its earnings, out of its sale of coal, and if we ever reach a time that it can not do that, it will have to stop business.

Mr. SHEARN. Or pay less to the railway company for freight?

Mr. BAER. It will not do that. It must pay the freight that other people pay. There is a freight rate established, and the coal & iron company and every coal shipper is treated exactly alike—no discrimination made for one in favor of the other.

Mr. SHEARN. Do you agree with Mr. Olyphant's statement of
1906 yesterday that the increased cost of mining amounts to about thirty cents a ton, consequent upon the award of the Strike Commission?

Mr. BAER. Yes; I think it is more.

Mr. SHEARN. How much more do you think?

Mr. BAER. That is difficult to get at. The award of ten per cent—I can not fix that without a careful consideration, and I do not think anybody can, for this reason, that our mines are on a nine-hour basis. It reduces the amount of production in our collieries about one and one-half million tons if we had been running. I mean it reduces the production to that extent in a year. I can not tell what the final result of that is going to be until we have got to the end of the year. It is rather alarming now. I can not tell, but I do not think thirty cents will cover it at all.

Mr. SHEARN. Well, it was stated that the wage element amounted to about half the cost—from one-half to fifty-five per cent?

Mr. BAER. But you see the element is in the reduction of the capacity of the collieries. As I tell you, we will mine, under the present arrangement, probably about one and one-half million tons less than we
1907 would under the old system. The decrease is about one hundred and twenty thousand a month; and there are other factors in it, as for example, we can not well control some of the collieries. Some of them only allow on outside work seven hours and sometimes only eight. They do pretty much as they please, and even when they work nine hours it reduces our production ten per cent, and on a production of eleven million tons, that would be one million one hundred thousand tons alone; and then there is the other increase of keeping up the terminal work, the pumping and outside work going on. It is a factor I will not venture on. I will tell you the end of the year when the figures are in.

Com'r PROUTY. When was the Reading Company organized?

Mr. BAER. The original Reading Company was organized in 1871 or 1872.

Com'r PROUTY. The original holding company?

Mr. BAER. Yes, 1871 or 1872. I think the charter is 1871.

Com'r PROUTY. Mr. Baer; another annual report is due on June 30th, and won't you call the attention of the auditor to that matter and
1908 have him make up his report in the way indicated?

Mr. BAER. You want this all in detail?

Com'r PROUTY. Certainly. There are about four million dollars there not accounted for.

Mr. BAER. Not in detail. I will do it.

The CHAIRMAN. If there are no further questions to be asked Mr. Baer, he will be excused.

The witness was excused.

1909 JOSEPH S. HARRIS, a witness on behalf of the complainant, having been duly sworn, testifies as follows:

Mr. SHEARN. Mr. Harris, prior to April 3rd, 1901, you were president of the Reading system, were you not?

Mr. HARRIS. About that time.

Mr. SHEARN. You were Mr. Baer's immediate predecessor?

Mr. HARRIS. Yes, sir.

Mr. SHEARN. How many years had you been president of the company?

Mr. HARRIS. About eight years.

Mr. SHEARN. You were present at a meeting of the presidents of the coal-carrying roads in January or February of 1896, when the question of the division or allotment of tonnage was discussed, were you not?

Mr. HARRIS. I do not recall the date.

Mr. SHEARN. Do you recollect that there was a meeting of the presidents of those companies?

Mr. HARRIS. No, not at that date.

Mr. SHEARN. Do you recollect that there was one in 1896 at all?

1910 Mr. HARRIS. No; I do not.

Mr. SHEARN. Well, it has appeared here in evidence from the testimony of Mr. Thomas, who was present at the meeting, that there was in January or February, 1896, a meeting of the presidents of the coal-carrying roads, in which this question of the allotment of tonnage was discussed. Do you recollect being present at any meeting with Mr. Thomas, chairman of the Erie board of directors, was there, and when Mr. Samuel Sloan was there?

Mr. HARRIS. I have been present at meetings where Mr. Sloan and Mr. Thomas were.

Mr. SHEARN. And Irving A. Stearns?

Mr. HARRIS. Quite likely.

Mr. SHEARN. You do recollect, do you not, that there was a time when that matter came up for discussion and decision among the presidents of the coal-carrying roads?

Mr. HARRIS. What question came up?

Mr. SHEARN. The question of a division of the business of carrying coal—a division of the tonnage of anthracite coal in certain percentages?

1911 Mr. HARRIS. You say an understanding as to what share of the business each road was legally entitled to?

Mr. SHEARN. Yes; if that makes it clearer.

Mr. HARRIS. Yes, sir.

Mr. SHEARN. Now, that meeting or conference was in 1896, as you recollect it, was it not?

Mr. HARRIS. I say I do not recollect; I have no reason to question the date.

Mr. SHEARN. But you do recollect such a meeting?

Mr. HARRIS. I recollect such a meeting.

Mr. SHEARN. What do you recollect took place at that meeting, and what was the result of that discussion?

Mr. HARRIS. It is quite too far away for me to recollect any details about that meeting.

Mr. SHEARN. You know, do you not, whether you came to any agreement or understanding or not?

Mr. HARRIS. Yes; we came to this understanding: That a certain share of the business would be reasonably satisfactory to the railroad interests represented there.

Mr. SHEARN. It was carefully, and with an endeavor to be just, divided up into percentages, was it not? For instance, don't you recollect that your percentage was 20.5?

Mr. HARRIS. Yes, sir.

1912 Mr. SHEARN. And that the other roads were divided up similarly in percentages?

Mr. HARRIS. The roads, as the result of the conference, agreed that certain percentages of what business might be done would be accepted by them as reasonably satisfactory.

Mr. SHEARN. And as late as February, 1901, you recognized that agreement as binding upon you and your road, did you not?

Mr. HARRIS. No, there never was any binding agreement, as can best be shown by the statistics at the time. There was never a year when that understanding was kept or nearly kept. It was a general statement of what would be fair and reasonable, but there was never a single year when there was anywhere near an approach to it.

Mr. SHEARN. Don't you know your road never varied one per cent from that?

Mr. HARRIS. I do not think it has.

Mr. SHEARN. Do you know it has not varied two per cent from that?

Mr. HARRIS. Quite likely it has not—two per cent of the whole matter. The understanding arrived at then was upon the eastern

1913 situation. Looking to the history of all the roads for ten or twenty years, we found that whether we were working in reasonable agreement or whether we were working against each other it came to about the same thing. If we fought for tonnage we did not get any more. It was simply an understanding based on the past—based on the capacity of our collieries and the capacity of the coal departments to sell coal—and that was about what each would fairly get under any circumstances.

Mr. SHEARN. And then stop fighting for tonnage?

Mr. HARRIS. Then stop fighting.

Mr. SHEARN. And that was the object of the meeting?

Mr. HARRIS. Certainly. The object was to get out of a state of things where they were all losing a great deal of money.

Mr. SHEARN. You recollect being examined as a witness before the Industrial Commission in 1901, do you not?

Mr. HARRIS. I recollect being examined.

Mr. SHEARN. Do you recollect being asked this question and making this answer:

1914 "Don't you recognize that you have a certain percentage of the market and that you are not to exceed that percentage so as not to encroach on the supply other roads take to the market?

"Answer. Yes."

Mr. HARRIS. No; I do not remember it. It may be so. How should I remember it?

Mr. SHEARN. You don't recollect making that answer, or being asked that particular question?

Mr. HARRIS. Certainly not.

Mr. SHEARN. You have no doubt that is true, have you? I am reading from page 602, volume 9, of the report of the Industrial Commission.

(Mr. Shearn again read the question and answer.)

Mr. HARRIS. What the understanding was—that was about the percentage to which we were entitled. Neither we or anybody else stopped at that line. It was a general understanding and was never anything more.

Mr. SHEARN. You recognized, you say here, that you had a certain percentage and were not to exceed that percentage?

Mr. HARRIS. In a general way. Some months we did not get

1915 the percentage and some months we did. There were some that continuously exceeded their percentages. It was only an understanding that that was about what was reasonable for us to take, and if we attempted to take very much more we should be considered——

Mr. SHEARN. You would not be living up to the understanding arrived at?

Mr. HARRIS. Yes, sir.

Mr. SHEARN. So you did, as late as April, 1901, recognize that you had a certain percentage of the market, and were not to exceed that if you were to live up in good faith to the understanding you gentlemen had?

Mr. HARRIS. Yes; I have no objection to that statement, except with the qualification that it was a general understanding. It was what each thought was fair. If either of us went very far beyond we thought we went a little too far.

Mr. SHEARN. That is all.

The witness was excused.

1916 C. D. HENDERSON, a witness on behalf of the complainant, having been duly sworn, testifies as follows:

Mr. SHEARN. What is your business, Mr. Henderson?

Mr. HENDERSON. Second vice-president of the Philadelphia & Reading Railroad, and general manager of the Philadelphia & Reading Coal & Iron Company.

Mr. SHEARN. You have been connected with the Reading system and its coal business a good many years, have you not?

Mr. HENDERSON. Yes, sir.

Mr. SHEARN. How many, approximately?

Mr. HENDERSON. I have been general manager of the coal & iron company about eleven years, and vice-president of the railway company five or six years.

Mr. SHEARN. Do you recollect the occasion in or about January of this year, when the coal purchase contracts of the coal & iron company with the private operators were suspended or abrogated?

Mr. HENDERSON. I do.

Mr. CAMPBELL. One moment. If your honors please, I object, but before stating the objection, I will suggest to the Commis-
1917 sion that Mr. Shearn be advised to forebear the examination of this witness in regard to the private affairs of the Philadelphia & Reading Coal & Iron Company against my objection. In due time, and we hope within a day or two, all controversy in regard to the materiality of this testimony, its pertinency here, or the propriety of its being called for here, we hope will be determined by the court. Should that determination be against the objections we have interposed, this Commission would be entitled—as it would at any time be personally perfectly welcome to the fullest and amplest disclosure of all these affairs we have been going into—but we object to the official consideration of these matters as not being within your jurisdiction. We object because of the construction given by Congress itself to the twelfth section of the act to regulate commerce in the act of 1903, which confines your jurisdiction to the testimony and papers of the shipper or the carrier. The testimony that is being called for here is neither. Whenever this Commission or the gentlemen here to inquire into the relations of the coal & iron company with any of these other respondents as a shipper of coal, you will find no obstacle presented by us, but when you go beyond that I shall
1918 object and insist upon my objection. I would prefer not to be placed in that position, and therefore beg that we arrange that the matter be not gone into at this time.

The CHAIRMAN. What have you to say, Mr. Shearn, in reply to Mr. Campbell's suggestion?

Mr. SHEARN. I do not accede to it.

Mr. CAMPBELL. I object, and instruct the witness to decline to answer.

Mr. SHEARN. I do not think I would have to argue long here on the proposition that the act of 1903 has stripped this Commission of all its power except the power to look at rate sheets filed by the companies. As we look at the act of 1903, and as we shall argue to-morrow, it strengthens and broadens the hands of the Commission in every respect, and was so intended, as a moment's inspection of the debates preceding the passage of the law in Congress will show. But that is neither here nor there. This question is relevent to this inquiry. If the Commission desire me to state the point again, I will cheerfully do so.

The CHAIRMAN. What do you want to show?

1919 Mr. SHEARN. My claim is, and has been consistently, that these so-called coal-purchase contracts are nothing more nor less than transportation contracts; that the mere fact that they are called purchase contracts does not in any respect change their essence, which is that there is so much left for the railroad company for transporting this coal after they have given up sixty-five per cent to the private operator. When we put in a contract between the Delaware & Hudson and the Hillside Coal Company and the Erie Company, that will more clearly appear than in the one read yesterday, because there the coal was not only turned

over to the Erie for transportation down here at this thirty-five per cent rate by the Delaware & Hudson Company, but a provision is made in the contract requiring the Hillside Coal & Iron Company to appoint as seller of the coal here the person or persons designated by the Delaware & Hudson Company, although the supposition is that they have sold the coal; that a sale has taken place, and that they no longer have title to it. Not only that, but the contract contains a clause requiring the coal to be sold so as to preserve its identity, and under the trade name of the Delaware & Hudson Company and under such conditions as the
1920 Delaware & Hudson Company prescribes. Nothing could be clearer as to what that contract is, or what all these contracts are. Nothing could be clearer than that they are nothing more nor less than transportation contracts.

The CHAIRMAN. Assuming that that is so, what do you want to prove by the witness?

Mr. SHEARN. Coming to that proposition and fortifying that proposition, I have shown already by Mr. Truesdale that in January, 1903, these private operators, as he said, and as another witness, Mr. Sturges, said, were turned loose and were permitted for ninety days to carry on business in this fashion: The coal & iron company bought the coal of them at the breaker for $3.25 a ton, and sold it back to them at tide water for $5.00 a ton, the difference being $1.75. That indicates clearly again that these contracts are nothing but transportation contracts. Why were they going through the form of buying the coal at the breaker for $3.25 and selling it back at tide water at $5.00 a ton if it was not a scheme that while this abrogation was in process they should be certain to get their full tariff rate, and in addition, as it turned out, twenty to twenty-five per cent more than the tariff rate, when coal was
1921 selling here for eight, nine, ten, and fourteen dollars a ton. This is important, because it shows that these contracts are transportation contracts and not purchase contracts. This afternoon—if I succeed in getting them—I shall lay before you contracts similar to this which are treated by the railroad company upon whom I am going to call for their production—they are treated by the railroad company as transportation contracts. They have given up the sham of their being purchase contracts.

The CHAIRMAN. You do not indicate what you want to show by this witness?

Mr. SHEARN. I am going to show by this witness that the same was done by the Reading Coal & Iron Company as to these contracts as by the Delaware, Lackawanna & Western, and the other companies. I can not be content to show this as to one company.

The CHAIRMAN. You want to show the suspension of these contracts—to show the fact?

Mr. SHEARN. I want to show the fact that they did it that way.

The CHAIRMAN. We will take a recess until 2 o'clock.

At one o'clock p. m. the Commission took a recess until 2 o'clock p. m.

1922 AFTER RECESS.

2 O'CLOCK P. M.

The CHAIRMAN. Mr. Shearn, you have not concluded what you desired to say at the time we took a recess.

Mr. SHEARN. All that I desire to say, in addition to what I said, is this: Bearing upon the interpretation of those contracts as transportation contracts, and not as purchase contracts, the general manager of the Pennsylvania Railroad, some years ago, when these contracts were first entered into, wrote a letter to Mr. E. R. Holden, of New York, the chairman of the anthracite rate commission, as he was called, and called his attention to the fact that it was currently reported that the companies had decided to enter into these sixty and forty per cent contracts, and he said:

"This change in the manner of dealing with the anthracite coal traffic necessarily requires an adjustment of rates for such transportation upon the basis of contracts to which I have already referred, for the reason that the amount received for the transportation must necessarily be the difference between the percentage agreed to be paid for the coal and the prices for the coal, including freight realized at destination.

1923 "The terms of these contracts have been published repeatedly as being sixty per cent of the selling price at tide for prepared sizes, and at different percentages for sizes lower than prepared. The average price at tide, on prepared sizes, is now, say, $3.60 per ton, forty per cent of which, representing the transportation rate, would be $1.44, while our present rate, as you are aware, is $1.70. It is therefore necessary for us to name the rate of $1.44 to seaboard at New York, which we will now do. I would further state, however, that if the prices of coal are changed the transportation rates will be decreased or increased correspondingly in the same ratio of forty per cent of the selling price at tide."

That is the way the general freight agent of the Pennsylvania Railroad regarded these contracts and interpreted these contracts. Realizing that they were transportation contracts and not purchase contracts, he thereupon reduced the transportation rate on anthracite coal on the Pennsylvania Railroad from $1.70 to $1.44. It is simply another illustration of my point, and all of these facts I am entitled to bring out, I

1924 submit, as helps or aids to the court, if necessary, in the interpretation of these contracts as rate contracts and not purchase contracts.

The CHAIRMAN. That argument all goes to the nature of these contracts and their bearing upon the issues presented in this case.

Mr. SHEARN. Yes, sir.

The CHAIRMAN. I suppose the facts you desire to show by the witness now on the stand involve the same general question as that which is to be presented to the circuit court to-morrow?

Mr. SHEARN. Well, I appreciate, of course, that there is going to be an argument to-morrow that may take the shape of our having to sustain in court the relevancy or materiality of this evidence, although I am not sure that will arise. In my view of it, it is not necessary for us to do that at all. But so far as the question raised here is concerned, it has been decided by the Commission.

The CHAIRMAN. We understand that perfectly, Mr. Shearn; but it appears from your preliminary question that the facts you seek to show by the present witness (Mr. Henderson) involve the same question to which objection has been taken and which other witnesses have
1925 refused to answer.

Mr. SHEARN. Some have. But you recollect that when Mr. Baer was on the stand some weeks ago I started to interrogate him upon this precise point, and he said that was another thing; that he could not be supposed to know all about it, but that Mr. Henderson was the man to ask about that. So we have asked Mr. Henderson to come here. Mr. Baer would apparently have answered the question if he had had the knowledge, and here is the man who knows.

Com'r FIFER. Counsel have already objected.

Mr. SHEARN. I don't know that they will instruct the witness not to answer. Of course it would be a waste of time if that is the case.

Com'r FIFER. You will not get the testimony, because they will instruct the witness not to answer. Mr. Campbell has already done so, practically. So it would save time to let the court pass upon the questions to-morrow. We would not be making any headway here whatever.

Mr. SHEARN. If Judge Campbell were to instruct the witness not to answer, we would, of course, not make any headway.

1926 The CHAIRMAN. Judge Campbell, didn't we understand you to object.

Mr. CAMPBELL. I did not want to say that to the Commission and evaded it, but when the gentleman persisted in talking about the matter, I warned him I would.

Mr. SHEARN. I am not going to waste the time of the Commission pursuing that to-day, if it is going to be a repetition of what we had before; but it will necessitate Mr. Henderson coming here on some other occasion, I anticipate.

The CHAIRMAN. We do not think it useful for you to seek to get facts from the witness which involve the question to be submitted to the court. It is a waste of time.

Mr. SHEARN. If that is the proposition, I won't pursue that.

The CHAIRMAN. Can you examine Mr. Henderson about any matters not involving the same general question which is to be determined by the court?

Mr. SHEARN. Yes, sir.

1927 The CHAIRMAN. We would like to know, Mr. Shearn, what witnesses you have and how long you will take to examine them on matters which do not involve the controverted question.

Com'r PROUTY. And whether you have any witnesses a part of whose testimony would not involve this direct question. It does not seem necessary to examine Mr. Henderson upon matters about which he is willing to answer and have him return for further examination. Have you any witnesses whose testimony does not relate to these matters which are before the court?

Mr. SHEARN. Why, yes; I have. I have a number of witnesses.

Com'r FIFER. Whose testimony you are ready to take now?

Mr. SHEARN. Yes, sir. That is what we are here for, as I understand it.

The CHAIRMAN. Then you may proceed with the examination of the witness.

Mr. SHEARN. I suppose that counsel will permit some interrogation bearing upon the question of what these rates are and how they are made up and as to the aspect of their reasonableness. That, every-
1928 body has conceded, as properly relevant and the Commission has intimated that they would like to have something on that.

The CHAIRMAN. My suggestion would be that after you get through with Mr. Henderson to-day that you do not call any witness whose testimony would involve the controverted questions to be submitted to the court. We understand you to say that you have a number of witnesses about whose testimony there will be no objection.

Mr. SHEARN. That is pretty hard to say.

The CHAIRMAN. Of course this all goes to the question of when we shall adjourn—what arrangements we shall make about the further hearing of the case. That is what we want to find out.

Com'r PROUTY. Judge Campbell, sometime—either while the complainants are putting in this testimony or when you are putting in yours—I wish to examine the auditor of your road, who can tell us what items he charges to permanent improvements and what to operating expenses.

Mr. CAMPBELL. I am very much afraid that he personally will
1929 not be able to help you out much. I will get the chief clerk to get his head on this subject in connection with our duplicate of your report and have him fill up those blanks and give the details that you are asking Mr. Baer for and have him come here to explain. But the comptroller himself is not fit for business. The chief clerk, who has charge, can get this data for you and take your old form, for instance, the last report, and fill in these details that you asked Mr. Baer about.

Com'r PROUTY. Your company, of course, has some system under which it charges certain items to permanent improvements and operating expenses. We want to know what you charge to each.

The CHAIRMAN. Proceed, Mr. Shearn.

Mr. SHEARN. I may say that these witnesses I have referred to—some of them and most of them—have knowledge both of matters as to which there will not be any objection and as to matters as to which apparently there will be objection. If we are going to eliminate all witnesses as to whose testimony there will be objection, we might as well stop. Irrespective of the decision on this motion of mine,
1930 I propose with the consent of the Commission to go ahead and finish my case and rest my case, because the essential matters have been established here, and all that will be necessary for me to do after the decision of Judge Lacombe will be to put in the documentary evidence, if it is admitted, and call the witnesses to answer the questions which they have refused to answer. So I apprehend that I can close my side of the case very speedily. I had hoped to close it this week or perhaps with one day next week.

Com'r CLEMENTS. Do you think it would expedite the case to partially examine each one of the witnesses, and then leave a lot of questions and call them back for further examination? Would it not be better to wait and go on later, knowing what you could do?

Mr. SHEARN. I do not propose to have the decision of this case hang fire while this question is being fought out in the court. It is quite possible that if the decision is adverse to the contention of the Commission, or is adverse to the contention of respondents, an appeal will be taken.

Whether a stay will be granted is another matter. If an appeal
1931 were taken and a stay granted, we should not expect this investigation to be halted while tedious appeal proceeding were being prosecuted in the Supreme Court of the United States, because it is not necessary to us, because——

Judge CAMPBELL. We have thought that all the time.

Mr. SHEARN. ——because we have proved these things out of the mouths of witnesses. We not have to rest content with that and can furnish better evidence from the contracts themselves.

The CHAIRMAN. Until that case is decided by the circuit court, it is not worth while to call a witness whose testimony involves that question—that is to say, even if he could be examined about matters that are not controverted. You do not want to call witnesses twice.

Mr. SHEARN. Certainly I do not want to; but I have brought the Commission here to hear this case and if I did not have any witnesses here I would be subject to just criticism. I will do anything, of course, that is suggested. If you will suggest that we suspend with this witness until next week, I am perfectly willing to do so.

1932 The CHAIRMAN. Have you some witness whose testimony does not go into this excluded field so as to occupy our time for a couple of days more?

Mr. SHEARN. I think I have enough to occupy your time to-day and one day more.

The CHAIRMAN. Well, we will go on for the present with Mr. Henderson.

Mr. SHEARN. If Mr. Henderson will step aside a moment I will take up another witness and see how we get along. I will ask Mr. Childs to take the stand.

J. E. CHILDS, a witness called on behalf of complainant, having been duly sworn, testified as follows:

Mr. SHEARN. Mr. Childs, you are the general manager of the New York, Ontario & Western Railway Company, are you not?

Mr. CHILDS. I am.

Mr. SHEARN. And have been for a good many years?

Mr. CHILDS. Yes; since 1886, with the exception of an interval
1933 of about ten months; but I have been general manager ever since the Scranton division was opened into the anthracite coal fields about 1890.

Mr. SHEARN. Your railroad taps the anthracite coal fields?

Mr. CHILDS. The upper field.

Mr. SHEARN. The Wyoming field?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. What is your principal gathering point?

Mr. CHILDS. Well, the Mayfield yard.

Mr. SHEARN. Where is that?

Mr. CHILDS. About two miles south of Carbondale.

Mr. SHEARN. Where is your terminal at tide water?

Mr. CHILDS. We have terminals at Weehawken, one at Cornwall, 53 miles up the river. That is all for tide-water business. We have also a terminal at Oswego, on Lake Ontario.

Mr. SHEARN. To what points do you ship the greater quantity of your anthracite coal?

Mr. CHILDS. About forty per cent goes to tide water. The balance is scattered.

1934 Mr. SHEARN. What are your other points of distribution, other than Weehawken, Cornwall, and Oswego? Do you go into New England?

Mr. CHILDS. Yes, sir; we ship to New England.

Mr. SHEARN. How do you get into New England with your coal?

Mr. CHILDS. We have shipped by Newburg and are now shipping over the Poughkeepsie bridge.

Mr. SHEARN. You have markets in Boston, have you?

Mr. CHILDS. The Boston business is generally taken by water from tide water.

Mr. SHEARN. How about Worcester, Massachusetts?

Mr. CHILDS. We send rail coal in there occasionally.

Mr. SHEARN. And Springfield, Massachusetts?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. And points in the Connecticut River valley—that goes across the Poughkeepsie bridge, does it not?

Mr. CHILDS. It does at present; yes, sir.

Mr. SHEARN. What is the distance between Carbondale and Weehawken by your road?

1935 Mr. CHILDS. We have mines way south of that point, you know. There are a number of mines right in the vicinity of Scranton, the southern terminus of that line. That would be 54 miles on the Scranton division and 161 miles on the main line to Weehawken.

Mr. SHEARN. From Carbondale?

Mr. CHILDS. From Scranton.

Mr. SHEARN. 161 miles plus 54?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. That is from Scranton?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Now, what is the length of your haul from Carbondale to Weehawken?

Mr. CHILDS. About 15 miles less.

Mr. SHEARN. And what is the average length of your haul of anthracite coal from the coal regions you tap to Weehawken? You say you have some mines south of Carbondale?

Mr. KERR. Do you mean to include the branches to breakers?

Mr. SHEARN. No; from gathering points.

Mr. CHILDS. Why, it is a little over 200 miles—202, or something like that.

1936 Mr. SHEARN. What is the mileage of your laterals or sidings into the coal region from the gatherin' point?

Mr. CHILDS. Oh, some of them are four to six miles long. Some of them are only one-half to three-quarters of a mile.

Mr. SHEARN. What is your rate on prepared sizes from Scranton to Weehawken?

Mr. CHILDS. The tariff rate, do you mean?

Mr. SHEARN. What is the tariff rate that you publish?

Mr. CHILDS. $1.60.

Mr. SHEARN. And what is the rate from Scranton to Cornwall on the Hudson?

Mr. CHILDS. It is a tide-water point. I think it is exactly the same. Possibly there is a difference of ten cents; I think there is between Cornwall and Newburg of about ten cents, from the rate to Weehawken.

Mr. SHEARN. Cornwall is only used of course when navigation is open?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Do you know about what proportion of the area of unmined anthracite your railroad owns or controls.

1937 Mr. CHILDS. That would be a guess. I do not like to say.

Mr. SHEARN. Have you not ever endeavored to approximate it?

Mr. CHILDS. Yes.

Mr. SHEARN. For instance, Mr. Oliphant yesterday said that the Delaware & Hudson had 12,000 acres, which he thought was about ten per cent.

Mr. CHILDS. Well, I can not do it.

Mr. SHEARN. About what is your average yearly shipment of anthracite when conditions are normal?

Mr. CHILDS. Two and a half to three million tons a year.

Mr. SHEARN. How large a proportion of that is made up of prepared sizes?

Mr. CHILDS. That varies a great deal, depending entirely upon the market conditions and the number of cars we have. If the prepared sizes demand all the cars, we shut up the washeries and that very largely reduces the small sizes.

1938 Mr. SHEARN. During the last few years what have you found, as the result of your experience, to be about the percentage of the whole shipment that the prepared sizes amount to—domestic sizes?

Mr. CHILDS. I should think between fifty and sixty per cent.

Mr. SHEARN. Nearer sixty than fifty, is it not?

Mr. CHILDS. No; It has not been lately; about midway.

Mr. SHEARN. I offer in evidence a certified copy of the certificate of incorporation or charter of the New York, Ontario & Western Railway Company.

(The same is hereto attached and marked "Exhibit No. 36.")

Mr. SHEARN. The New York, Ontario & Western Railway Company is a New York corporation, is it not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Does the New York, Ontario & Western Railway Company own the capital stock of any companies that are engaged in the business of mining anthracite coal?

Mr. CHILDS. Yes.

1939 Mr. SHEARN. One of those companies is the Elk Hill Coal & Iron Company, is it not?

Mr. CHILDS. Yes, ir.

Mr. SHEARN. That is a corporation under the laws of the State of New York?

Mr. CHILDS. Yes.

Mr. SHEARN. What is its capital stock?

Mr. CHILDS. Really I can not tell you.

Mr. SHEARN. Your road owns all of the capital stock?

Mr. CHILDS. It does.

Mr. SHEARN. The business of that company is managed and controlled by the managers and controllers of the business of the railway company, is it not?

Mr. CHILDS. Not entirely.

Mr. SHEARN. Are you an officer of the Elk Hill Coal & Iron Company?

Mr. CHILDS. I am a director.

Mr. SHEARN. Do you hold any managerial position in it?

Mr. CHILDS. Not at all.

Mr. SHEARN. Who is president of it?

Mr. CHILDS. Mr. Fowler.

1940 Mr. SHEARN. He is president of the railroad company also, is he not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. And who is secretary of the Elk Hill Coal & Iron Company?

Mr. CHILDS. Mr. Ricard.

Mr. SHEARN. And he is secretary of the railroad company also?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. You understand, do you not, that by virtue of your ownership of all the capital stock of that company you do control the operations of that company?

Mr. CHILDS Yes, sir.

Mr. SHEARN. By voting the stock you are able to elect any officers or directors you please and so control the operation of the company. When did you acquire the capital stock of the Elk Hill Coal & Iron Company?

Mr. CHILDS. I can not give you the exact date.

Mr. SHEARN. It was about the time you started in to build up your anthracite traffic, was it not?

1941 Mr. CHILDS. Oh, no; we did that in 1890. This was 1899 or thereabouts—1898 or 1899. I do not remember the exact date, but it was about that time.

Mr. SHEARN. Where are the mines of the Elk Hill Coal & Iron Company located?

Mr. CHILDS. Some in the vicinity of Forrestville and Carbondale and south of that as far as Winton and Throop.

Mr. SHEARN. You also own all the capital stock of the Scranton Coal Company, do you not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. In the same way?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. And to the same extent?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Where are the mines of the Scranton Coal Company located?

Mr. CHILDS. In the vicinity of Scranton.

Mr. SHEARN. Do you own the stock of any other coal company?

Mr. CHILDS. No.

1942 Mr. SHEARN. What is the annual output of those two coal companies?

Mr. CHILDS. Two and a quarter to two and a half million tons if worked to their full capacity. No; I think that is wrong. I think it is a little over two million—about eighty per cent of our entire output.

Mr. SHEARN. About eighty per cent of what you carry?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. And the balance of twenty per cent comes from the mines of private operators?

Mr. CHILDS. Individual operators.

Mr. SHEARN. You carry the coal of the Elk Hill Coal & Iron Company under contract between your company and that company, do you not?

Mr. CHILDS. There is a transportation agreement.

Mr. SHEARN. Counsel for the New York, Ontario & Western Railroad company has produced a copy of the contract between the Ontario and Western and the Elk Hill Coal & Iron Company. I offer it in evidence.

(The same is hereto attached and marked "Exhibit 37.")

1943 Mr. SHEARN. I am not going to read much of this contract, but some of its provisions I want to call your attention to.

"This agreement, made this thirtieth day of November, 1900, between the Elk Hill Coal & Iron Company, a corporation duly organized under the laws of the State of Pennsylvania, hereinafter called the Coal Company, party of the first part, and the New York, Ontario & Western Railway Company, hereinafter called the Railway Company, party of the second part."

First, it recites the organization of the coal company for the purpose of mining anthracite coal and preparing the same for shipment, and then recites the desire of the coal company to continue these operations and recites the fact that the railway company operates a railroad near this coal company's property, and then provides:

"First. That said Railway Company agrees to furnish, or cause to be furnished, to said Coal Company, at the time and in the menner hereinafter mentioned, the sum of five million dollars with which to purchase or complete the purchase of the various additional properties above

1944 mentioned and pay debts, the repayment of which said five million dollars is to be secured by two mortgages, covering all the property of the said Coal Company, now owned or to be acquired, as aforesaid or otherwise, one of said mortgages to be for the sum of three million five hundred thousand dollars, to be executed to the Morton Trust Company, as trustee, and to be a first lien on the said property."

Mr. KERR. I wish you would state the recital there so as to get it in the record that the coal company desires to continue the mining operations upon said properties and further develop the same, and to have said railway company furnish transportation for the coal which it shall mine and prepare for market, and to take from it fuel for the permanent supply of said railway company, and so forth.

Mr. SHEARN. Clause second of the "whereases" or recitals reads as follows:

"Said Coal Company desires to continue the mining operations upon said properties and further develop the same, and to have said Railway Company furnish transportation for the coal which it shall mine and prepare for market, and to take from it fuel for the permanent supply
1945 of said Railway Company, and to accomplish such purposes requires the aid of said Railway Company to complete the purchase of said properties."

Then follows the provision as to the advancement of eight million dollars secured by mortgages.

Mr. KERR. Not eight million dollars?

Mr. SHEARN. Five million dollars secured by mortgages.

Mr. SHEARN continued the reading of the contract as follows:

"Said Railway Company also agrees that it will either by use of existing railroads, or the construction of new lines, make connection of the road now operated by it with the collieries now existing on said properties, or which may hereafter, with the consent of the Railway Company, be constructed thereon, and furnish cars at such breakers for the transportation of all coal which said Coal Company shall produce upon said properties and shall desire to have transported by said Railway
1946 Company, and for the purpose of handling cars and receiving said coal, said Railway Company shall have the exclusive right to use all tracks now upon said properties, or which may hereafter be laid thereon.

"Second. 21. Said Railway Company may purchase from said Coal Company, at its breakers, such coal as the Coal Company shall produce, of the sizes required by the Railway Company for fuel for its own use, and pay for the same at the rates hereinafter provided; and the said Railway Company shall have the right to take all such product of any particular size or sizes which it may need for such purpose.

"Third. 1. The Coal Company agrees that it will, at its own expense, make, construct, provide, and maintain during the continuance of this agreement, and in good order and condition, upon its lands contiguous to each breaker it may operate, all main and side tracks and switches necessary for the standing of empty and loaded cars and for the convenient and expeditious loading and shipping of coal from said breakers,
1947 and hereby grants to the said Railway Company the exclusive control and use of all such tracks and switches.

"2. The Coal Company agrees to deliver for transportation to the Railway Company, in cars upon said tracks, all coal that the Coal Company shall mine and remove from the lands and properties acquired or to be acquired by it as aforesaid, including all coal prepared in *in* washeries except such as may necessarily be used in and about the mining and preparation of coal, and its work on said lands, and such as it

may sell either of its breakers for local consumption in the vicinity thereof, and agrees to so deliver to said Railway Company, either for transportation or for the use of said Railway Company as fuel, at least two million (2,000,000) tons of coal per annum * * *

"3. Said Coal Company agrees to pay the Railway Company for the transportation of such coal, the following rates or prices:

"For coal of sizes larger than 'pea' coal, consigned to Weehawken, Cornwall, Oswego, Oneida, Rome, or Utica, forty (40) per cent of the general average price realized at said points, respectively, for said coal, by the said Coal Company, not less, however, than the average price
1948 realized from the same size of coal at such points, respectively, (except Cornwall) by the Delaware and Hudson Canal Company and the Delaware, Lackawanna and Western Railroad Company during the month in which the coal shall have been carried, and at Cornwall not less than such Weehawken averages less ten (10) cents per ton. For coal delivered at other local points forty (40) per cent of the selling price of such coal sold at such points, respectively, the selling price, however, not to be less than the average realized by other parties selling coal in the same vicinity.

"The Railway Company also agrees to carry 'pea' coal to all points aforesaid for fifty (50) per cent of the prices realized for said coal at the points of destination during the month in which the same shall have been carried, with the same provisions as to selling price as is provided for larger prices, but in no case shall the rate of freight on 'pea' coal be greater than or other and larger sizes.

"The Railway Company also agrees to carry 'buckwheat' coal at the same rates per ton as shall be realized, as above provided for freight on 'pea' coal.

1949 "The Coal Company shall pay in addition to the rates aforesaid five (5) cents per ton for each ton delivered from trestles at Weehawken, Cornwall, or Oswego on board of vessel.

"Fourth. The Railway Company further agrees to secure as low rates for the transportation of coal in conjunction with some one of its connecting lines, from the said breakers to Buffalo, Black Rock, and Suspension Bridge, as may be actually made or charged by other transportation companies from the Lackawanna district to said points."

It then recites that a ton of coal shall be 2,240 pounds, and the weights determined by the weights of the coal on the cars of the railway company at the breaker.

Mr. Childs, have you since the date of this contract, November, 1900, been transporting anthracite coal mined by the Elk Hill Coal & Iron Company under and pursuant to the terms of this contract?

Mr. CHILDS. No; not strictly. There is a favored-nation clause there that you have not read, I believe—that if more favorable rates of transportation are offered by other companies that this company shall have the benefit of that lower rate.

1950 Mr. SHEARN. That is the fourth clause.

Mr. CHILDS. No; that is to Buffalo. There is another favored-nation clause there.

Mr. SHEARN. Well, there is a clause, then, in this contract which I have not read, which provides that the rates to the Elk Hill Coal & Iron

Company shall be as low as the rates to other companies on other anthracite-carrying railroads?

Mr. CHILDS. To that effect; yes, sir.

Mr. SHEARN. What you call "favored-nation clause?"

Mr. CHILDS. Yes, sir.

Mr. SHEARN. This company was to be as well off as any other coal company which was tributary to other railroads?

Mr. CHILDS. In 1900 the rates were changed from forty and sixty per cent contracts. They were changed to thirty-five and sixty-five.

Mr. SHEARN. When was this contract entered into, Mr. Childs?

Mr. CHILDS. I do not know. You have the date of it there.

Mr. SHEARN. About how many years ago?

1951 Mr. CHILDS. I was under the impression that it was about 1899. I won't be positive.

Mr. SHEARN. This contract provides for a forty per cent rate.

Mr. CHILDS. All of the transportation agreements were made on that forty and sixty per cent basis. They commenced to make them on that basis before the line was opened into the coal region.

Mr. SHEARN. How far back were you transporting the coal of the Elk Hill Coal & Iron Company upon a percentage basis?

Mr. CHILDS. The Elk Hill Coal & Iron Company has consigned its coal to commission houses in New York, and they have made the settlement with the Elk Hill Coal & Iron Company and with the Ontario & Western Railroad Company for transportation.

Mr. SHEARN. Can you give me the date when you started in?

Mr. CHILDS. No; I could not.

Mr. SHEARN. It was as far back as 1890 that you were carry-

1952 ing the coal of the Elk Hill Coal & Iron Company under a percentage agreement, was it not?

Mr. CHILDS. I presume so. I can not give you the date.

Mr. SHEARN. Previous to the execution of this contract in November, 1900, you were carrying it at the same through rate then—sixty and forty per cent—were you?

Mr. CHILDS. The sixty and forty contracts were made in 1899 and they were continued to be made on that basis up to the time the other companies changed to sixty-five and thirty-five; and we have never changed our agreements, but, under the favored-nation clause, we changed to sixty-five and thirty-five instead of sixty and forty.

Mr. KERR. The original contract was on the basis of sixty and forty?

Mr. SHEARN. When you built your branch down there so as to tap the mines of the Elk Hill it had two mines?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. What were they?

Mr. CHILDS. Richmond No. 3 and Richmond No. 4.

1953 Mr. SHEARN. Up to the time of the execution of this new contract those were the only two collieries they had?

Mr. CHILDS. That is all.

Mr. SHEARN. And during those years you were carrying their coal on the forty per cent basis?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. In or about 1899 did that company acquire other collieries?

Mr. CHILDS. No.

Mr. SHEARN. When did it?

Mr. CHILDS. When the company was purchased its charter was used for the purchase of other collieries.

Mr. SHEARN. That was in 1900?

Mr. CHILDS. Yes, sir; I think so.

Mr. SHEARN. And that was the time you entered into this contract Exhibit 37?

Mr. CHILDS. I don't know whether you have the original there or the one made later.

Mr. SHEARN. No; I have the one made in November, 1900.

Mr. CHILDS. That is the enlarged company, the new company, which company operated some eight or ten collieries, while the original had only two.

1954 Mr. SHEARN. Then you were transporting coal under this contract of November, 1900, until a change was made in the rate by other railroads?

Mr. CHILDS. Precisely.

Mr. SHEARN. And when was that change made?

Mr. CHILDS. My impression is it was 1900, but I can not give the exact date.

Mr. SHEARN. Don't you recollect that it was about March, 1901?

Mr. CHILDS. I can not say.

Mr. SHEARN. Do you recollect the purchase of the Pennsylvania Coal Company by the Erie?

Mr. CHILDS. I do not know the date of it. I recollect it.

Mr. SHEARN. Can you place this change in relation to that date?

Mr. CHILDS. I can not. I remember it was just after the settlement of the strike of 1900.

Mr. SHEARN. Do you recollect the purchase of the capital stock of the Central Railroad of New Jersey by the Philadelphia & Reading?

Mr. CHILDS. That would not refresh my memory.

1955 Mr. SHEARN. That would not refresh your memory?

Mr. CHILDS. No, sir.

Mr. SHEARN. About how long, according to your recollection, did you transport the coal of this company under this sixty and forty per cent contract?

Mr. CHILDS. Until after the settlement of the strike of 1900, when the other companies began to settle on the sixty-five and thirty-five per cent basis.

Mr. SHEARN. Since that time you have been transporting their coal for thirty-five per cent of the price at tide water?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Have you filed this contract with the Interstate Commerce Commission?

Mr. CHILDS. I think it has been. Mr. Kerr can tell you. I know that some of our transportation agreements have been filed with them. I don't know whether that particular one has. They are all in the same form.

Mr. SHEARN. And the reason you made the change was that you recognized the fact that the basis of transportation on other roads had

changed to thirty-five per cent, and therefore you were bound under the conditions of this contract to make the same change?

1956 Mr. CHILDS. Precisely.

Mr. SHEARN. Do you transport the coal of the Scranton Coal Company under contract?

Mr. CHILDS. That is exactly similar.

Mr. SHEARN. Mr. Kerr produces the contract and I offer it in evidence.

(The same is hereto attached and marked "Exhibit 38.")

1957 Mr. SHEARN. Now, without my taking time to read this Scranton Coal Company contract dated April 1st, 1899, you are able to say, from your familiarity with it, are you not, that it is essentially the same kind of contract as the one I last read?

Mr. CHILDS. It is. The same terms exactly.

Mr. SHEARN. Now, did you, at or about the same time you changed the basis of the transportation of the Elkhill coal to 35 per cent, change the transportation of the Scranton Coal Company coal to 35 per cent?

Mr. CHILDS. I presume so.

Mr. SHEARN. And for the same reason?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Now, 20 per cent of the coal transported by your road comes from the mines of individual and private operators. How large a percentage of that do you transport, if any, under contract?

Mr. CHILDS. Why, all of that coal. There are only three or four of them that have contracts—the Riverside, Mount Jessup, and Northwest, and I think the Clark County Company. These and all other individual operators assign their coal to a commission merchant

1958 in New York. They pay them sixty-five per cent of the tidewater price in the cars at the breaker. They also settle with the Ontario & Western.

Mr. SHEARN. Sixty-five per cent of the price at the breaker?

Mr. CHILDS. At tide water. That is the settlement made not only with the Elkhill Company and others, but with all individual operators.

Mr. SHEARN. Dixon & Eddy are sales agents here of the Elkhill Coal & Iron Co., are they not?

Mr. CHILDS. And all the individuals.

Mr. SHEARN. And settle as you have described?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. And remit what is left after paying the sixty-five per cent and after paying the commissions and the cost of the business to the New York, Ontario & Western Railroad Company?

Mr. CHILDS. That is right.

Mr. SHEARN. Mr. Kerr has produced the contracts between the Mount Jessup Coal Company and the Ontario & Western, and the Northwestern Limited and the Ontario & Western, and the Riverside Coal Company and the Ontario & Western. Are these contracts essentially like

1959 the ones we have been reading?

Mr. CHILDS. The terms are exactly the same—forty and sixty.

Mr. SHEARN. They all contain that favored-nation clause?

Mr. CHILDS. Exactly.

Mr. SHEARN. And at the time that the other roads changed their transportation rate to 35 per cent you changed the rate of these three companies the same way?

Mr. CHILDS. We did.

Mr. SHEARN. I offer these three contracts in evidence.

(The same are annexed and marked "Exhibits Nos. 39, 40, and 41.")

Com'r PROUTY. You say that those contracts are filed with the Commission?

Mr. CHILDS. That is my impression.

Com'r PROUTY. Your files will show what the price of coal at tide water has been for these years—you could furnish a statement of that?

Mr. CHILDS. I could.

1960 Com'r PROUTY. Do you understand that under the interstate-commerce act you have a right to file this kind of a contract?

Mr. CHILDS. Yes, sir.

Com'r PROUTY. And so long as you treat all shippers alike there is no discrimination?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Clause 3 of the contract provides that the coal companies shall pay, in addition to the rate, five cents per ton for coal handled on or delivered from trestles at such points, free on board of vessels. That has been done away with since you entered the 35 per cent arrangement, has it not?

Mr. CHILDS. Yes, sir. The others have not exacted it and we have not.

Mr. SHEARN. When it was exacted it was supposed to represent the fair cost at the trestle for delivery on board, was it not?

Mr. CHILDS. No; it did not. That is the result of a compromise with the individual operators. We endeavored to get them to pay ten cents. They objected, and we compromised on five cents. They paid it up to the time that the other companies came in, and made it 60 and

1961 40, and when they made it 65 and 35 we adopted the same divisions.

Mr. KERR. Up to 1889 or 1890, when you made these contracts on the basis of 60 and 40 per cent, the rate up there had been 50 and 50, had it not?

Mr. CHILDS. Yes, sir; until we made the contracts, the rate of transportation had been 50 per cent.

Mr. KERR. Your company was the pioneer?

Mr. CHILDS. Yes; I think so.

Com'r PROUTY. Do you still transport coal under these contracts, Mr. Childs?

Mr. CHILDS. We do.

Mr. SHEARN. Mr. Childs, the price of coal to-day at tide water is $4.70—the circular price on prepared sizes—is it not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. When coal is selling at $4.70 at tide, prepared sizes, what do you find is left to the railroad company for transportation?

Mr. CHILDS. I said 35 per cent, less commission and certain losses in handling.

1962 Mr. SHEARN. Well, 35 per cent would be $1.64. What deductions must come out of that $1.64 before you get the net result to your company? What comes out for commission for selling?

Mr. KERR. I object.

Com'r PROUTY. Does the railroad pay the entire commission or the coal company?

Mr. CHILDS. It comes out of the 35 per cent.

Mr. SHEARN. The 65 per cent goes absolutely to the coal company and the rate must come out of the 35 per cent, and now we are trying to find out if other deductions come out of the 35 per cent.

Mr. KERR. The other deductions are, commission for selling that coal, expenses of handling, etc.—the ordinary expenses of handling. I object to his stating the amount of any commission for selling.

Com'r PROUTY. You do not know what the rate to the railroad company for transporting the coal is until the commission is taken out. Your company does not sell the coal?

Mr. KERR. The coal is consigned to a firm in New York. It is kept together and called Ontario & Western coal simply to identify it.

1963 Every coal producer wants to have a sort of trade-mark and all the coal that comes over our road and can be sent to one concern is sent there for consolidating, having a trade-mark and making a market for it. Now, those people sell the coal and the railroad people have nothing to do with the sale, but the commission of the men that sell it really comes out of the 35 per cent.

Com'r PROUTY. Then you can not tell what the rate received by the railroad is until you take out the commission?

The CHAIRMAN. Is it not competent to show what you actually get for carrying the coal?

Mr. KERR. I am willing if the Commission want to ask us what we actually got at any particular time. I do not think we ever got the tariff rate or ever charged it. All the coal has been carried under these contracts. My objection is not to telling what was received net for the transportation of the coal, but I do not like to disclose what commission these men, Dixon & Eddy, received, who are competitors in

1964 business with other men here. I am perfectly willing to show what we get.

The CHAIRMAN. That would seem to answer the question. There are other deductions besides the commission, are there not?

Mr. KERR. No; except the expense of handling, but that is a legitimate transportation expense. That they have nothing to do with. That comes into another branch of the subject which we will take up later, and show how it is more expensive to do this anthracite coal business than any other.

The CHAIRMAN. That is part of the service in handling the coal?

Mr. KERR. Yes, sir.

The CHAIRMAN. How are we to know what your company actually gets for transporting coal?

Mr. KERR. If you ask us for any particular time, we will give the figures.

Com'r PROUTY. We would like to have it right along.

Mr. KERR. We are perfectly willing to show the Commission what we got any one month or two months or year for the transportion of anthracite coal.

1965 Com'r PROUTY. We would like to know also what the tide-water price was for coal at the same time.

Mr. KERR. Mr. Ruley gave that.

Com'r PROUTY. Mr. Ruley only gave it since 1891.

Mr. KERR. How far do you want to go back—to when we built the road?

Com'r PROUTY. We want to go back to 1890.

Mr. KERR. We can do that.

Com'r PROUTY. It ought not to be a very difficult matter to furnish from your files a statement which will show for each month what rate you have received, what the tide-water price of coal has been each month for the last ten years. That ought not to be difficult.

Mr. KERR. I do not know that we can furnish the tide-water price.

Com'r PROUTY. I understood Mr. Childs to say he could.

Mr. KERR. I think he only gets it from the same bureaus that Mr. Ruley gets it from.

Com'r PROUTY. Don't these people render a statement to you and pay the freight once a month?

Mr. KERR. Yes, sir.

1966 Com'r PROUTY. And that statement necessarily shows the tide-water price, does it not?

Mr. KERR. Yes, sir.

Mr. SHEARN. If counsel is going to furnish to the Commission a statement of the actual amount his company has received for transporting this coal for the period mentioned, I will not press the specific question before the Commission and ask what was actually paid to Dixon & Eddy for commissions.

Mr. KERR. The annual reports of the company show the average amount received for the transportation of anthracite coal for the year. Our statistics are made up to show that.

The CHAIRMAN. You mean your reports to the Commission or to the stockholders?

Mr. KERR. To the stockholders.

Mr. SHEARN. That is entirely unsatisfactory. It has all the sizes lumped together.

Mr. KERR. What do you want—a statement showing the amount on each size?

Mr. SHEARN. On prepared sizes.

Mr. KERR. We can furnish that.

Mr. SHEARN. Now, Mr. Childs, from your experience in the

1967 business, what do you find to be the fair and usual and ordinary commission for selling coal at tide water?

Mr. KERR. I object to that. That is an indirect method of getting at Messrs. Dixon & Eddy's business. I do not think that is fair.

Mr. SHEARN. I do not see how that can involve any trade secret. Other witnesses have answered that.

Mr. KERR. I do not think so.

The CHAIRMAN. Several witnesses have told us that the commissions for selling coal were from ten to fifteen cents a ton.

Mr. SHEARN. Ten to fifteen cents a ton.

Mr. KERR. What difference does it make whether the commission is ten or fifteen or twenty-five cents?

Mr. SHEARN. Well, we have other respondent companies here and we are not going to get the figures from them showing what they receive for the transportation of coal.

The CHAIRMAN. You did not ask what they paid, as I understood; you asked what would be a fair commission to pay. As I understand, Mr. Shearn asks—not what you pay, Mr. Kerr, but what would be a fair commission to pay—what is the market price?

1968 Mr. KERR. It is asking it in an indirect way. I do not think Mr. Childs knows about any other company.

Mr. SHEARN. Then I shall have to ask him what commission is paid to Dixon & Eddy.

Mr. KERR. I object to that. If the Commission is to have the net price received, that is all they want.

The CHAIRMAN. We think that, as Mr. Childs has promised to furnish a statement showing the price of coal at tide water and exactly what they got for carrying it, that the question is unnecessary.

Mr. SHEARN. Mr. Childs, you also have to deduct out of this 35 per cent whatever it costs you to put the coal from your cars into the barges at tide water, don't you?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. That is to say, you have to bear now the terminal charges, which a moment ago you said amounted, in your opinion, to twenty cents a ton?

Mr. CHILDS. There is a charge at the mines and a terminal charge at the boats which are included in the transportation rate.

Mr. SHEARN. So that out of this 35 per cent that comes to you

1969 you not only have to pay the commission to Dixon & Eddy for selling the coal, but you have to bear the terminal expense?

Mr. CHILDS. Yes, sir.

The CHAIRMAN. That is, it is an amount which delivers the coal on board the boat or barge?

Mr. SHEARN. Yes, sir. What do you find, Mr. Childs, to be the cost of putting the coal on board from the cars?

Mr. CHILDS. That is a very difficult proposition. In the first place, we have very expensive terminals. If you take into consideration the cost of those terminals and depreciations, as well as the cost of handling, it would be a considerable amount. I can not say exactly what that would be.

Mr. SHEARN. Well, you think the whole terminal charge, including interest on investment, etc., amounts to about twenty cents a ton?

Mr. CHILDS. I hardly think that would cover it.

Mr. SHEARN. Would it amount to 25 cents a ton?

Mr. CHILDS. I think that would cover it.

1970 Mr. SHEARN. Out of that 25 cents a ton how much of an expense is there about the actual unloading of the coal and putting it into the barges?

Mr. CHILDS. I can not tell you that; that is a matter of a few cents.

Mr. SHEARN. Well, it varies, does it not, from three to seven or eight cents a ton?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. You spoke of the expensive terminals. I observe in your report for 1902 an item of $108,665 for new south coal dock, Weehawken, begun June, 1901, and finished June, 1902. Now, how many docks have you, coal docks, that cost as much as that?

Mr. CHILDS. We have a duplicate of that on the North Side. The cost of that is not in that year, I think, because it was begin the previous year. Then we have a wharf there that cost some eighty-five thousand dollars, and the water front was very expensive and the riparian rights were very expensive. Take it all in all, I think our Weehawken terminals cost about $500,000.

Mr. SHEARN. Now, I see in the report for 1901 the item: New south coal dock, Weehawken, begun June, 1901, $7,108.93. So the total cost of that would be about $115,000, would it not?

1971 Mr. CHILDS. Yes, sir; that is exclusive of the wharf, the made land out to where the trestle begins. That was made in 1890 at an expense of about $80,000; and then there are the water rights and riparian rights.

Mr. SHEARN. Are all these facilities devoted to the coal traffic?

Mr. CHILDS. Exclusively.

Mr. SHEARN. And you estimated the cost roundly at half a million dollars?

Mr. CHILDS. Yes, sir. We have another at Cornwall.

Mr. SHEARN. I was going to ask what that cost.

Mr. CHILDS. About $375,000. We have two large trestles at Oswego. They are on rented ground and cost from two hundred and fifty to three hundred thousand dollars.

Mr. SHEARN. Those are all your terminals?

Mr. CHILDS. Used exclusively for coal.

Mr. SHEARN. What have you found in your experience during the last few years, going back, say, six or eight years, the cost of bringing coal to the gathering point to be per ton?

1972 Mr. CHILDS. I do not know that I could tell. Some of it is carried a short distance and some a long distance. Some is carried over a grade of 300 feet to the mile, and some we pay trackage on to get it, and, taking it all in all, I think it is 15 to 30 cents. I think in their division of the freight rate they allow sometimes fifteen cents and sometimes thirty cents in prorating and sending over another line. It is never less than fifteen cents.

Mr. SHEARN. Never less than fifteen cents, and it sometimes ranges as high as thirty?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. What other deductions are there to come out of the 35 per cent, than those you have named?

Mr. CHILDS. Coal is often stored. It often stands around in the cars for two or three months. The stoarge of coal is very expensive. We have a storage plant at Winterton, that stores 120,000 tons of coal. That cost us $100,000 and over to build. The interest on cost of plant and

repairs and investment and the depreciation on the actual value of the coal cuts some figure, because the coal is not considered so good after having been stocked.

Mr. SHEARN. What do you say as to the actual cost of transporting coal from your gathering point, at or near Carbondale to Wheehawken?

1973

Mr. CHILDS. I can not tell you.

Mr. SHEARN. Well, you have not been transporting it at a loss, have you?

Mr. CHILDS. No.

Mr. SHEARN. Well, during some of the time that you have been carrying coal under these contracts coal has sold as low as $3.50, prepared sizes, at tide water, has it not?

Mr. CHILDS. That was during the 60 and 40 per cent contracts.

Mr. SHEARN. Well, during the 35 per cent contracts, coal has sold at $4.00 at tide, has it not?

Mr. CHILDS. I think so. I am not positive. I can not speak as to the prices of coal. I do not remember them.

Mr. SHEARN. Well, it has appeared that the price of coal on the first of April, 1901, was $4.50, with 50 cents off, which would be $4.00, for prepared sizes.

Mr. CHILDS. I thought you were speaking of prices more recently?

Mr. SHEARN. No, sir. Thirty-five per cent of that is $1.40.

1974

Out of that $1.40, you have deducted the commissions and the expense of three to seven cents a ton for putting on board, and the other elements of course you have referred to. Does not that enable you to give the Commission some idea what it costs to bring coal down here?

Mr. CHILDS. I do not think I can give the Commission or you the cost of carrying a ton of coal a mile. I think our annual report that year will show that we made from twenty-five to thirty per cent profit on the business done. That is the best I can do for you.

Mr. SHEARN. The cost of bringing a ton of coal from Carbondale to Wheehawken on your line is considerably under a dollar, is it not?

Mr. CHILDS. I do not say it is. I do not know.

Mr. SHEARN. Well, if you deducted all these items from $1.40——

The CHAIRMAN. You are speaking of what it costs and he is telling you what they get.

Mr. SHEARN. He says they have been doing business at a profit.

Mr. CHILDS. I said on all the business of the road, 25 to 30 per cent.

1975

Mr. SHEARN. The coal freight business is the most profitable part of your business, is it not?

Mr. CHILDS. No, sir; I do not say so. It is the bulk of it, but not handled at the greatest profit.

Mr. SHEARN. Don't you find it the cheapest kind of freight you handle?

Mr. CHILDS. We get less for it.

Mr. SHEARN. I mean what it costs you to bring it down?

Mr. CHILDS. Yes; I presume that is so.

Mr. SHEARN. In all these years you have been actually engaged in this business and carrying this traffic, have not you been able to satisfy

yourself what it cost the railroad a ton to transport the coal from Carbondale to New York?

Mr. CHILDS. I have been in the transportation business 30 years, and have been trying to find it out all that time, and the more I investigate it the less I think I know about it. They carry it now and make a profit at what it cost years ago.

Mr. SHEARN. You know, of course, that it costs you less than a dollar a ton to bring anthracite coal from Carbondale to Weehawken, don't you?

1976 Mr. CHILDS. I do not say that. The more you investigate the cost of moving a ton of freight one mile, I think, the less you will find you know about it. Conditions are changing all the time.

Com'r PROUTY. What do you mean by the cost?

Mr. CHILDS. The actual cost of transporting one ton one mile. I mean the actual cost of transportation—general expenses, taxes, and everything.

Com'r PROUTY. You can tell what the actual cost of movement is, can you not?

Mr. CHILDS. I try to get at it. It is a good deal of a guess and changes every year.

Mr. SHEARN. What change has there been in that respect since March, 1901? Has there been any great change?

Mr. CHILDS. Certainly. The cost of supplies and labor has increased very materially.

Mr. SHEARN. Have you any idea how much that has added per ton to the cost of bringing coal down here?

Mr. CHILDS. No; I can not give that. I know our pay rolls are considerably increased, and the cost of supplies has increased very materially.

1977 Mr. SHEARN. But year after year you have been laying up a larger surplus, have you not?

Mr. CHILDS. Well, we have had a larger business. The more business we carry we might, by increasing the volume, to a certain extent offset the increase in the pay roll and supplies.

Mr. SHEARN. I observe in your report for 1902 that your surplus for 1900 was $859,024 and that the charges were $689,541, whereas the next year your surplus went up to $879,231 and your charges went down to $666,514. There was not any increase in the cost.

Mr. CHILDS. Look at the gross earnings and you will find a large increase.

Mr. SHEARN. The gross earnings for 1900 were $4,963,000 and for 1901 $5,322,000, and your net for 1900 was $1,548,000 and your net for 1901 was $1,545,000.

Mr. CHILDS. There was a considerable increase in the gross and not very much in the net.

Mr. SHEARN. Now, in 1902 the surplus went down to $658,000?

Mr. CHILDS. There was some loss there on account of the strike?

1978 Mr. SHEARN. Now, don't those figures indicate that after all there has not been very much increase in the cost?

Mr. CHILDS. I know there has been an increase in the cost of supplies and labor, but, as I say, it is offset to some extent; during later

years we have increased the volume of the business and decreased the expense of handling.

Mr. SHEARN. I suppose, also, it might be accounted for by the fact that during the same period we are talking of the price of coal has considerably increased. That has tended to offset the increased cost of transportation, has it not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. During the months of January, February, and March, 1903, were you still operating under these contracts, or did you suspend them and abrogate them, as some of the other companies did?

Mr. CHILDS. We did with two or three of the small companies that asked us to do it because others were doing it; not all of them; they did not all ask us.

Mr. SHEARN. On what basis did you transport coal at that time when the contracts were abrogated?

1979 Mr. CHILDS. It was a question of charging the tariff.

Mr. SHEARN. You charged them the tariff?

Mr. CHILDS. Yes, sir. There was very little of it.

Mr. KERR. Mr. Childs, you are mistaken about that.

Mr. CHILDS. Oh, no; we did not abrogate those contracts. We settled on a $5 basis. The contracts were not abrogated, but the coal was turned over to them to resell at New York at $5.

Mr. SHEARN. You bought the coal from them on the basis of 65 per cent and resold it to them at $5 a ton?

Mr. CHILDS. Sold it back at $5 a ton.

Mr. SHEARN. So that during those three months that the high prices prevailed here you got $1.75 for transporting this coal down here, when your published tariff rate was $1.60 and when 35 per cent of the tidewater price——

Mr. CHILDS. No. Thirty-five per cent of five dollars represented what we received for freight, but you must deduct from that the commission and the losses.

Mr. SHEARN. I do not know how much to deduct for commission and losses.

Mr. CHILDS. I am not allowed to tell you.

1980 Mr. KERR. That was all threshed out by Mr. Truesdale and Mr. Thomas.

Mr. CHILDS. It was the same in general of the other companies, and I think they have all told the story.

Mr. SHEARN. Oh, no; Mr. Campbell would not let Mr. Henderson tell awhile ago. At any rate the individual operators who demanded it——

Mr. CHILDS. There were only three individual operators. One of them did not ship any coal during that period.

Mr. SHEARN. And as to those two remaining individual operators, you bought their coal and transported it down here for 35 per cent of $5?

Mr. CHILDS. That is right.

Mr. SHEARN. Although your published tariff was $1.60?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Did you make any other profit out of that situation? I am informed that some of the other companies not only did that, but got 50 cents a ton in addition to the published rate.

Mr. CHILDS. We did not. We sold it at exactly $5—no profit.

1981 Mr. SHEARN. Who fixes the price of the Elk Hill coal—the Ontario & Western?

Mr. CHILDS. The sales agents.

Mr. SHEARN. Who are the sales agents?

Mr. CHILDS. The coal is sold by Dixon & Eddy.

Mr. SHEARN. Did Dixon & Eddy determine what the price of the coal should be?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Is their say absolute in the matter?

Mr. CHILDS. All the instructions they had were that we expected them to get for our coal as much as was usually received for the white ash free-burning coal; to get as much for it as others got for similar coal. Those are the only instructions, I think, they ever had.

Mr. SHEARN. Do you find that they carry out those instructions?

Mr. CHILDS. Yes; they do.

Mr. SHEARN. Do you permit them to sell under the prevailing market price?

Mr. CHILDS. Yes; if necessity requires.

Mr. SHEARN. But they do not?

Mr. CHILDS. I find that they do about as well as others with the same coal.

1982 Mr. SHEARN. Your coal is also going up ten cents a month during the summer months, is it not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. Who determines that?

Mr. CHILDS. It is the market price for coal, and they are supposed to get the same as others.

Mr. SHEARN. You know now, don't you, that coal will go up ten cents on July 1st?

Mr. CHILDS. I expect it will. That has been announced.

Mr. SHEARN. And ten cents more on the first of August?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. How do you know that?

Mr. CHILDS. I only know it as a matter of rumor.

Mr. SHEARN. Don't you have anything to say whatever about such a matter as an increase in the price of coal of fifty cents a ton in one year?

Mr. CHILDS. All the instructions our agents have had is that we expect them to get as good prices for our coal as others realize for the same kind of coal in this market.

1983 Mr. SHEARN. Then this advance of fifty cents a ton in the price of your coal over last year is not due to any necessity on your part to charge fifty cents more, but is due to the fact that others charge more?

Mr. CHILDS. It used to be the market price, and that is what we expect them to get.

Mr. KERR. All the reasons for that difference in price and gradual increase have been threshed over——

Mr. SHEARN. I am not speaking of the gradual increase. I am speaking of the fifty cents increase. Have you found, Mr. Childs, that there is any increase in the cost of mining coal since the award of the strike commission?

Mr. CHILDS. I have nothing to do with mining coal.

Mr. SHEARN. Who knows about that?

Mr. CHILDS. John R. Boyden is general manager of the Elk Hill Coal Company and the Scranton Coal Company.

Mr. SHEARN. Do you find in places like Worcester, Springfield, and Boston, Mass., that other railroad coal companies are selling coal? You are not the only company reaching those points named?

Mr. CHILDS. Certainly not.

Mr. SHEARN. What are the other companies?

1984 Mr. CHILDS. I do not know. That is a matter of detail that I can not give. It is accessible to several other coal companies.

Mr. SHEARN. Do you find any cutting of rates or competition at those places, or do you find the same situation?

Mr. CHILDS. I can not tell you the details of that. I am not familiar with them.

Mr. SHEARN. You do not know of there being any competition at those points, do you, in the sale of your coal?

Mr. CHILDS. I know there is competition, but can not tell you any details of it, because it does not come under my immediate jurisdiction. That is a matter for the sales agent.

Mr. SHEARN. These trains of anthracite coal coming down from Scranton and Carbondale to tide water are solid trains of coal cars, are they not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. About how many loaded cars do you haul down per train?

Mr. CHILDS. It varies according to the grades.

Mr. SHEARN. According to the grades?

Mr. CHILDS. Yes, sir.

1985 Mr. SHEARN. The grades of the road or the grades of coal?

Mr. CHILDS. The grades of the road.

Mr. SHEARN. What are the grades of your road from Scranton?

Mr. CHILDS. There are some of them over seventy feet to the mile.

Mr. SHEARN. How far do you have to haul coal up hill from Scranton in bringing it to Weehawken or Cornwall?

Mr. CHILDS. It is about 25 or 30 miles up a heavy grade. There are five miles at 70 feet to the mile, then fourteen miles at 42 feet. It is continuous. Then there are a few more miles at 25 to 30 feet.

Mr. SHEARN. That brings you to the crest?

Mr. CHILDS. Yes, to the summit.

Mr. SHEARN. Then, it grades down?

Mr. CHILDS. Oh, no; there is a seventy-foot grade from Livingston Manor and a 65-foot grade to get over the Shawangunk Mountain.

Mr. SHEARN. From Carbondale how long a haul do you have to make up hill?

1986 Mr. CHILDS. Five miles at seventy feet to the mile and fourteen miles at forty-two feet to the mile.

Mr. SHEARN. That brings you to the summit?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. How many cars are there in your average train from Carbondale to Wheehawken?

Mr. CHILDS. We start from Carbondale usually with forty-five to forty-eight cars, and with three locomotives. We cut off one locomotive at the top of the seventy-foot grade and two locomotives take it up the forty-two-foot grade.

Mr. SHEARN. What is the average capacity of the car?

Mr. CHILDS. About twenty-six to twenty-seven tons gross.

Mr. SHEARN. How many cars do you haul out of Scranton and with how many engines?

Mr. CHILDS. Those are pick-up engines that bring coal to Carbondale. They run out there with ten, fifteen, or twenty cars.

Mr. SHEARN. It is cheaper, is it not, to run trains made up solid than trains made up with mixed cars—mixed kinds of freight? Is it
1987 not cheaper to bring solid trains of coal cars down than it would be to gather up a lot of mixed freight?

Mr. CHILDS. It does not matter. It is the tons that count.

Mr. SHEARN. Well, there are several elements to consider, are there not; for instance, the risk to the traffic? For instance, if you have a collission and dump a lot of coal out, you do not lose the coal?

Mr. CHILDS. Not entirely. It is better in that respect.

Mr. SHEARN. Whereas, if it was a mixed carload the loss might be a total loss?

Mr. CHILDS. The coal might be.

Mr. SHEARN. How?

Mr. CHILDS. I have had several cases where it went down two hundred feet.

Mr. SHEARN. But don't you think the risk in transporting coal——

Mr. CHILDS. Oh, it is less than merchandise freight, of course.

Mr. SHEARN. What about liability to accident? Are not trains made up of solid cars less liable to have misfortune and accident than
1988 trains made up of some heavy and some light cars?

Mr. CHILDS. No; the coal cars are heavy, and some foreign cars are pretty light, and when you get a lot of box cars and foreign cars, you sometimes have a weak sister in the train—but that is only because the coal cars are uniformly heavy.

Mr. SHEARN. That is an item that makes it less expensive. It is due to the kind of cars you ordinarily transport coal in and the kind of cars you ordinarily transport other merchandise in?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. How large a proportion of the coal cars go back empty—all of them?

Mr. CHILDS. Nearly all. We very seldom get a load going back.

Mr. SHEARN. How large a proportion of your other cars devoted to miscellaneous or merchandise traffic go back empty?

Mr. CHILDS. Twenty-five or thirty per cent. Sometimes we make it very nearly uniform.

Mr. SHEARN. Then the proportion of loaded cars on your line
1989 is about the same as for the entire group of railroads in which you are included according to the grouping of the Interstate Commerce Commission?

Mr. CHILDS. I presume so.

Mr. SHEARN. How many of these empty cars does one locomotive haul back?

Mr. CHILDS. We have the same number of trains to send back.

Mr. SHEARN. One engine takes practically the same number of cars back?

Mr. CHILDS. The same number.

Mr. SHEARN. You have more complete control over your coal cars, do you not, than over cars for ordinary merchandise; that is, you get them returned sooner; you have better control over them?

Mr. CHILDS. Well, not when they are off the line.

Mr. SHEARN. Of the cars that come to tide water you do?

Mr. CHILDS. Well, they are on our own line, in our own hands.

Mr. SHEARN. And they do not get out of your hands so that that is another element in favor of anthracite traffic as compared with miscellaneous traffic?

1990 Mr. CHILDS. The same thing happens as to any cars that come to New York. They do not get out of our possession.

Mr. SHEARN. Don't you find that whether they get out of your possession or not you get back your coal cars sooner than you get your ordinary cars back—you say they come back empty?

Mr. CHILDS. No; the coal cars are like the merchandise. We have so many sidings, they often have to lie and wait for a market. Sometime they lie two or three months with unsalable sizes, and therefore our coal cars make the poorest mileage of any cars on the road.

Mr. SHEARN. But that does not happen with your tide-water cars?

Mr. CHILDS. Yes; I presume it does.

Mr. SHEARN. The coal is loaded into your cars by gravity, is it not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. And unloaded by gravity?

Mr. CHILDS. Not entirely.

Mr. SHEARN. You have to have some little trimming done?

1991 Mr. CHILDS. Yes, sir; we have to shovel out the ends.

Mr. SHEARN. Are you familiar with the method of loading and unloading bituminous coal?

Mr. CHILDS. I have never handled any.

Mr. SHEARN. Have you seen it loaded and unloaded?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. It is loaded and unloaded the same as anthracite, now, is it not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. You have observed that it takes more labor to unload bituminous than anthracite coal, have you not? It does not run as freely?

Mr. CHILDS. I do not think so.

Mr. SHEARN. You know it does not run as freely, don't you?

Mr. CHILDS. I do not think there is any difference.

Mr. SHEARN. You have been through the mining region where the bituminous coal comes from, have you not?

Mr. CHILDS. Yes, sir.

Mr. SHEARN. How does the system of gathering the coal together at common points there for transportation to tide water compare with or differ from the situation in the anthracite region?

1992 Mr. CHILDS. Why, there is very little difference in the cost of gathering, except that the anthracite is handled in a great many more sizes that necessitates a great deal more switching in the years and making up coal, and getting your cars down to the handling point at tide water.

Mr. SHEARN. Then in the bituminous country they also have this burden of building laterals into the mines and hauling to common gathering points just the same as in the anthracite?

Mr. CHILDS. And they do not, as a usual thing, have such heavy grades or as expensive lines to the mines.

Mr. SHEARN. Can you think of any reason, then, why there is such a disparity between the rates charged per ton per mile on anthracite as compared with bituminous?

Mr. CHILDS. Well, it depends upon the country in which it is carried. Of course coal roads as a rule haul longer loads by reason of lower grades, and, so far as I know, the train mile is better than we can get per train mile in the anthracite regions. Another reason is that we

1993 can haul fifty per cent more coal—bituminous coal—in the same number of cars per year than we can coal of anthracite for the reason I have just stated, that the cars remain idle waiting for a market. Another thing is the expensive switching out of these innumerable sizes of anthracite.

Mr. SHEARN. At the terminal?

Mr. CHILDS. Yes; at the terminal and at the yards where they are called for. We started off with lump, grate, egg, stove, chestnut, buck No. *No.* 2, and buck No. 3, and then we often have then screened besides, culm. All of these sizes have to be switched, and the cost of switching is a very expensive item.

Mr. SHEARN. All of which of course you have included in these charges we were speaking of earlier in the day—the 25 cents at this end and fifteen to thirty cents at the other end?

Mr. CHILDS Well, there is also that item also in the middle, where you make up your trains at division points—you often have to do a great deal of switching there. It is all practically included in the transportation, of course.

1994 Mr. SHEARN. Then, for those reasons you think there is some difference in favor of bituminous as compared with anthracite, and that for the reasons given anthracite should bear a somewhat larger rate?

Mr. CHILDS. I certainly do think it ought to bear a higher rate per ton per mile, because its cost is greater and because you can not haul on any of the anthracite roads as heavy trains as you can on bituminous roads.

Mr. SHEARN. Do you know the average number of cars in bituminous trains?

Mr. CHILDS. B. R. & P. for the last fiscal year showed an average of 424 tons per train.

Com'r PROUTY. Is that coal?

Mr. CHILDS. Coal. Ontario & Western average 285. Now, they had a lower freight rate than we did, and yet their earnings were 2.15 per train mile and ours were 2.05.

Mr. SHEARN. Now, have you got other instances there that you can give?

Mr. CHILDS. Yes; Hocking Valley, average 678 tons. According to their annual report for the last fiscal year they earned 2.90 a train mile.

Mr. SHEARN. As compared with your 2.15?

1995 Mr. CHILDS. 2.05 was what we earned last year.

Mr. SHEARN. Now, have you some other instances of that?

Mr. CHILDS. Norfolk & Western carried 476 tons per train mile. They earned 2.20 a train mile.

Mr. SHEARN. In your judgment does that justify a charge of twice as much per ton per mile?

Mr. CHILDS. Well, we do not receive twice as much per ton per mile in the first place; it would justify a higher rate because the cost is greater. I can give you the cost.

Com'r PROUTY. Mr. Childs, do you think what you have received is fair?

Mr. CHILDS. Yes; I do think it is about fair. We got 6.31 mills the last fiscal year, and that enabled us, with the haul—enabled us to earn 2.05 a mile, while, as I have shown you, the bituminous roads earned from 2.15 to 2.90, and they carried a rate from 4½ to 5 mills, and yet, with 6.3 mills, we could not get but 2.05, and I know I have got bigger engines than they have on any of those roads, for I have a lot of one hundred ton engines, and there is not a hundred-ton engine on any of those

1996 roads I have mentioned.

Com'r PROUTY. You testified with reference to the standing of the train, etc. Does one engine handle a train from the last point to tide water?

Mr. CHILDS. No; that is at the main line at Cadosia. Then there are two points where we have to have pushers behind them to go to Middletown. Then at Middletown we can only take about 25 cars with one engine through to tide water, but we can put on fifteen cars to Randallsville and send those over to New England, which we usually do. In that way the trains are made up according to the grade, either by adding pushers o making up or cutting down the train. But there are several points where we can not haul more than sixteen or seventeen cars per train with one engine. For instance, a rising grade of seventy-five foot to the mile, we carry 48 cars with three locomotives. That is an average of 16.

Mr. SHEARN. You haul coal for the Delaware & Hudson Company from Sidney to Oswego?

Mr. CHILDS. We do.

Mr. SHEARN. What does the Delaware & Hudson Company pay you a ton for hauling coal from Sidney to Oswego?

1997 Mr. CHILDS. Well, that is in the nature of a contract that we have with the Delaware & Hudson Canal Company. I think it is filed with the Commission. At all events, we can give you copies of it.

Mr. SHEARN. Will you do that?

Mr. CHILDS. Mr. Kerr, he wants a copy of the contract for transporting the D. & H. coal to Oswego.

Mr. SHEARN. There is no objection to that, is there?

(Mr. Kerr's reply was not audible to the stenographer.)

Mr. SHEARN. You have no objection personally?

Mr. CHILDS. Not the slightest.

Mr. SHEARN. It would not harm anybody that you can think of?

Mr. CHILDS. No.

Mr. SHEARN. Well, do you know without referring to the contract how much they pay you a ton for that haul?

Mr. CHILDS. No; I can not recollect.

Mr. SHEARN. How far is it from Sidney to Oswego?

Mr. CHILDS. It is about 124 miles.

Mr. SHEARN. What is the grade, do you know, between Sidney and Oswego?

1998 Mr. CHILDS. Yes; going on to Sidney there is a long pull of 65 feet to the mile.

Mr. SHEARN. For how long?

Mr. CHILDS. For about sixteen to eighteen miles, I should think.

Mr. SHEARN. Does that bring you to the summit?

Mr. CHILDS. That brings you to one summit, then we get down into the Chenango Valley, and then getting out of that we have a grade of 45 feet to the mile. Well, that is all there is that is very heavy. You can pull a pretty fair train from there.

Mr. SHEARN. Well, you ship D. & H. coal from Sidney to points on the Utica division by way of Randallsville?

Mr. CHILDS. Yes.

Mr. SHEARN. Is that also covered by the same contract?

Mr. CHILDS. It is all in the contract. There may be two contracts, but it is all one; they were made at the same time, in 1886.

Mr. SHEARN. I offer in evidence the annual reports of the New York, Ontario & Western for the years 1899, 1900, 1901, and 1902. That is all, Mr. Childs.

1999 The CHAIRMAN. Those are the reports of that company to its stockholders?

Mr. SHEARN. To its stockholders; yes.

(The reports were admitted in evidence and marked "Exhibits 42, 43, 44, and 45," respectively.)

Mr. KERR. Mr. Chairman, I want to recall Mr. Childs later, when we have some figures as to the expenditures, so I won't take up the time now with any examination. I want to have the figures exact.

The CHAIRMAN. When he comes again he can bring the statement he is to prepare.

Mr. KERR. You did not indicate, I think, the period you wanted it to cover.

The CHAIRMAN. For ten years.

Mr. KERR. For ten years? Well, that would be a good deal of labor.

The CHAIRMAN. Why should it be?

Mr. KERR. We do not know where the records are. We do not keep them after the statute of limitations has expired. Would not the last three years suit the purposes of the Commission? I do not think our figures really would be a fair test to go back more than three years.

Mr. SHEARN. I think we ought to go, anyway, to January 1,

2000 1896, when this allotment agreement was made. In fact, we ought to go to 1895, because in 1895 the average price at tide water, if

the court please, was 3.12 a ton and in the next year it jumped up nearly fifty cents a ton, and it has been on the rise ever since. I think from January 1st, 1895, down to the present time would give the Commission very valuable data in this case.

Mr. KERR. But the Commission wants the information as to the situation that exists now.

Mr. SHEARN. Oh, but in all the cases I have read they have taken into consideration the rates that have prevailed for a number of years back and the conditions that have prevailed. You can not judge of the situation from one year or two years to *fix upon a reasonable* rate.

The CHAIRMAN. For how long has your road been a considerable carrier of coal—you have been a considerable carrier of coal ever since you built the branch in the coal region?

Mr. KERR. Well, small at first; we only carried about a half a million tons, and then we gradually increased it.

2001 The CHAIRMAN. I should assume that you must know what you have actually received for carrying coal.

Mr. KERR. I suppose we could look it up, but I think the annual reports show pretty well.

The CHAIRMAN. Go to your annual reports to get it, then.

Mr. KERR. These annual reports to the stockholders for the last five or six years show the amount received for transportation for anthracite coal.

The CHAIRMAN. We think it is proper and important to know what you actually received for carrying coal; sometimes the rate has been 40 per cent of tide-water price, sometimes 35 per cent, and then commissions paid, etc.

Mr. KERR. The annual report shows the average received through all the year. Now, if the statement is made up on monthly averages, perhaps it will show the different prices received, but the average for the year is the only test really of what a fair rate is.

The CHAIRMAN. The Commission think you should furnish that information. If you find that to furnish it for the last ten years is onerous or impossible, why eight or nine years will do.

2002 Mr. KERR. Well, I will go through the records, Mr. Chairman, and see what we can get out of them.

The CHAIRMAN. I think that what you have actually carried coal for is certainly a competent and important fact.

Mr. KERR. Perhaps the Commission do not understand that the detailed records are destroyed; they are not kept for a very long period. It is only the general results that go to the books. In order to get at the detail we have got to go through all these freight sheets and everything else for this long period. After the auditor has check' up, gone through the coal and freight accounts, the same as he does in every other thing, the result is turned over to the general bookkeeper and it goes on the books, and that ends it; the details do not go on the general books. But I will have it investigated.

Com'r PURDY. If you find on the examination of your books that you can not furnish that information, you produce your auditor and we will find out from him what the books contain. If you can furnish the information that will save bringing the auditor.

Mr. KERR. Very well.

2003 Mr. SHEARN. Whitney & Kemmerer have sent up here a mass of stuff, about as intelligible as Mr. Kemmerer's testimony, and I am sure I can not understand it. I understood he was going to send his superintendent or some one here who could explain it.

Mr. CAMPBELL. At the time the witness was on the stand I protested against the production of any papers here. Unless the witness is on the stand to testify concerning them, I object.

The CHAIRMAN. We understood that Mr. Kemmerer was either to appear or to have his superintendent here to produce those figures and be asked respecting them.

Mr. SHEARN. He will have to come again, that is all.

The CHAIRMAN. Do you desire to call another witness, Mr. Shearn?

Mr. SHEARN. No. In view of what the Commission intimated at the opening this afternoon, it seems to me that the time of everybody would be saved if we adjourned until Monday. I have a number of witnesses under subpœna, I suppose eight or ten witnesses, for this afternoon and for Thursday, but nearly all of them come within this prohibitive zone and Judge Campbell will object to their giving testimony.

2004 Com'r FIFER. When do you hope to conclude your side of the case?

Mr. SHEARN. I can conclude my side of the case in two days more. Of course I do not want to conclude it until the decision on the motion. But I can conclude my case in two days more—three days at the outside.

Com'r FIFER. Well, suppose Thursday and Friday of this week?

Mr. SHEARN. Oh, but I would be in the same position I am in to-day. I am ready to go on, but if we have to bring witnesses here and half interrogate them, as the chairman said, nothing can be gained by that.

Com'r FIFER. Don't you anticipate the court will decide the question at once?

Mr. SHEARN. I do; yes; but judging from the plans they have made we won't get through with the argument until long after this time to-morrow night.

Com'r PROUTY. Have you any witnesses, Mr. Shearn, whose testimony does not go to these points?

Mr. SHEARN. Yes, sir.

Com'r PROUTY. Would they occupy a day?

2005 Mr. SHEARN. I think so. Mr. Childs is going to testify, and we are to finish up with him Thursday. Now, Mr. Henderson, I want to interrogate on the same line that I have interrogated Mr. Childs on this matter of rate, and Mr. Taylor, of the Lehigh, who is under subpœna, to the same point, and Mr. Coombs, of the Central Railroad of New Jersey, on the same point, and Mr. Searles is to be here with Mr. McVay.

Com'r FIFER. All that could be taken without any reference to the point now before the court?

Mr. SHEARN. Absolutely.

Com'r FIFER. If that is all taken, then you think one more day after the decision of the court will be sufficient?

Mr. SHEARN. Well, I should say that three days more, irrespective of the decision of Judge Lacombe, would finish our side of the case.

The CHAIRMAN. Of course we won't sit to-morrow morning. We will adjourn now until Thursday morning at half past ten.

Adjourned to Thursday, June 11th, 1903, at 10.30 a. m.

2006 United States circuit court, southern district of New York.

IN THE MATTER OF PETITION INTERSTATE COMMERCE Commission for an order touching witnesses and documents on the hearing upon the complaint of William Randolph Hearst, petitioner and complainant,

vs.

PHILADELPHIA & READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, defendants.

LACOMBE, circuit judge.

All parties pressed the court for an early decision, and it was understood that adjournments were being taken to await its action. Therefore it seems best merely to indicate the conclusions reached, without going into any discussion of the grounds for such conclusion.

It appears from the record that William R. Hearst heretofore duly filed a petition and complaint against the defendants alleging:

(1) That the freight rates charged by them for the transportation of anthracite coal are unreasonable and unjust.

2007 (2) That said rates are relatively unreasonable and unjust as compared with the rates charged for transportation of bituminous coal and with the rates for other carload freight generally.

(3) That defendants have combined to pool and divide among themselves freights and freight traffic of anthracite coal; and

(4) That they have discriminated against private operators of coal mines by charging them a higher rate of freight than charged other private operators or coal companies owned by said defendants; all in violation of the interstate commerce act.

Answers having been interposed, the Commission duly ordered a hearing upon this complaint, and upon such hearing certain witnesses declined to produce specific documents or to answer specific questions, wherefore petitioner prays for an order or orders requiring the production of such documents and answers to the questions.

It would appear from the decision of the Supreme Court in the Brinson case (154 U. S.) that upon application for such an order the circuit court does not sit as an appellate tribunal, but should decide all questions raised as to relevancy of testimony as if such questions were raised before it in the first instance.

There are several witnesses proceeded against, although for convenience their cases have been heard together on a single petition. Separate orders, however, should be made in each case, for each case is a separate proceeding instituted in this court against the particular individual.

2008 Among the objections advanced to the granting of this petition it is contended that the Interstate Commerce Commission has no jurisdiction to hear the complaint for the reason that the complainant is not himself a shipper of coal. It was contended in opposition that the Commission is conducting a general investigation into the conduct of the business of transportation by the defendant carriers, which it has a right to do under the statutes independent of any complaint by a person aggrieved. The record, however, does not sustain this proposition. The proceeding before the Commission was begun by the service of a formal verified complaint, to which separate answers were interposed by the several defendants; the petition presented to this court avers that the refusals to produce documents and answer questions took place in the course of "a hearing upon said complaint" which the Commission had duly ordered; the prosecution of the complaint before the Commission is being conducted—as it is most appropriate that such prosecution should be—by the counsel for the complainant.

In view of the language of the interstate commerce act there is great force in the contention that the prosecution before the Interstate Commerce Commission of carriers who violate the statutes should be at the instance of a shipper, and that an individual who merely purchases merchandise, the price of which is advanced by reason of its including the cost of transportation from the place of production to the place of sale, may not institute and prosecute such a proceeding where no shipper raises any objections to the rates charged. In view of the other
2009 grounds of objection which have been interposed, however, it will not be necessary to decide this question.

The specific points raised in each case are as follows:

I.

In the case of David G. Baird, secretary of the Lehigh Valley Coal Company, it is asked that he be required to produce "all contracts for the purchase and transportation of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal, or owners or operators of coal mines."

In opposition it is suggested that the Lehigh Valley Coal Company is a corporation independent of any of the defendants, and that the contracts asked for are between it, a third party, and other outsiders. It appears by the record that the capital stock of the Lehigh Valley Coal Company is all owned by the Lehigh Valley Railroad Company, and it may fairly be contended that its transactions, if not those of an agent of the railroad company, were conducted solely in its interests. The contract, or at least one of the contracts, asked for, has been produced and submitted to the court, and it does not provide, as indicated in the petition, that the "prices paid to the seller are certain percentages of the prices for which the coal is sold at tide-water terminals." It is entirely a contract of purchase and does not deal at all with the subject of transportation. It fixes the price which the Lehigh Valley Coal Company is to pay the seller for coal at a certain percentage of the price at which coal
2010 of the same quality and size shall be sold during the month at a specified place. It is in no way different from a contract for the

purchase of a specified number of tons of coal at a specified sum in dollars and cents; a contract made in the State of Pennsylvania and to be completed therein by the delivery of coal at the breakers.

Whether the Lehigh Valley Coal Company is to be considered as an independent corporation, or whether in the transaction it is to be taken as the alter ego of the railroad company, and the coal bought under the contract be treated as the coal of the railroad company, this particular contract is not relevant to the questions of reasonable rates, discrimination, &c., which were presented by the complaint.

The petition to direct the production of this contract is therefore denied. If, however, there are any contracts in the possession of the witness which deal with the subject of transportation, as well as with the subject of purchase, they should be produced.

II.

In the case of Fred F. Chambers, secretary of the Delaware, Lackawanna & Western Railroad Company, the contracts referred to have been submitted to the court, and, as in the other case, they appear to be all contracts of purchase only. The order to produce is therefore denied.

III.

In the case of Orlando C. Post, auditor of the Delaware, Lackawanna & Western Railroad Company, it appears that the original vouchers asked for show the transactions for the purchase of coal under the 2011 contracts last referred to and contain no information whatsoever on the subject of transportation. The motion to require their production is denied.

IV.

In the case of George O. Waterman, secretary of the Lehigh and Wilk'sbarre Coal Company the contracts appear to be all contracts of purchase only, and the petition is denied.

V.

In the case of Richardson, secretary of the Hillside Coal and Iron Company, and of the Pennsylvania Coal Company, the motion for order to produce is denied for the same reason.

VI.

In the case of William G. Brown, secretary of the Philadelphia & Reading Coal and Iron Company, the motion to produce the contract is denied for the reasons given above.

VII.

In the case of E. D. Sturges, secretary of the Dolph Coal Company, the Clarence Coal Company, and the Pine Hill Coal Company, the motion for an order requiring the production of the contracts of purchase is denied for the reasons above expressed.

VIII.

In the case of Edgar C. Hebbard, secretary of the Guaranty Trust Company of New York, an order is asked requiring the production of several contracts referred to in the petition and upon the argument as

the Temple Iron Company contracts. It appears that heretofore
2012 certain coal operators and coal companies which were not owned or controlled by the defendants, being dissatisfied with the freight rates or with the manner in which the business of transportation was being conducted, came together for the purpose of building or securing the building of a new road from the coal regions where their mines were located to tide water. The defendants being unwilling to meet the competition which such a new road would introduce, combined together and bought up the collieries of those who were promoting the new road. Thereupon the project of building such competing road was abandoned. The contracts in question are parts of the machinery by which this combination prevented the building of the new road. If the defendants were being prosecuted under the Sherman antitrust act for having entered into a combination, agreement, or contract in restraint of trade, the contracts in question would be relevant testimony. This, however, is not a prosecution under the antitrust act, nor is the Interstate Commerce Commission the forum before whom such a prosecution is conducted. The contracts seem to be irrelevant to the proceeding under this complaint and the motion to require their production is denied.

IX.

In the case of the witness George F. Baer the motion to require him to produce the Temple Iron Company contracts is denied.

X.

In the case of the witness Eben B. Thompson the following questions were put:

2013 (1) "Bearing in mind your testimony that you do not believe in reckless competition did you also conduct the business of selling coal in accordance with those same ideas so as to avoid what you regard as reckless competition?"

(2) "Who fixes the price of the coal of the Lehigh Valley Coal Company that is sold at tide water?"

(3) "Who fixed the price of the coal of the Hillside Coal and Iron Company and the Pennsylvania Coal Company that was sold at tide water during your connection with those properties?"

(4) "Are the prices of anthracite coal at tide water fixed by agreement between the presidents of these different coal companies?"

The motion to require answers to these questions is denied on the grounds that they relate wholly to the sale of coal and not to its transportation.

XI.

In the case of the witness, William H. Truesdale, the witness was asked: "What elements or expenses are included in the item $91,321.65 for general expenses?" He declined to answer. Inasmuch as the document containing that item is in evidence before the Commission, the witness should answer this specific question.

The following questions were also asked of the same witness:

(1) "Who sells your coal on commission?"

(2) "Do you consider that twenty cents a ton commission that you have charged here against the cost and expenses of mining is a fair and reasonable charge for commissions?"

(3) "You maintain a sales department of your own at the city of New York, don't you?"

(4) "Do you sell anthracite coal at tide water?"

(5) "What is the price of coal to-day sold by the D., L. & W. at tide water?"

(6) "What has happened to make the advance? Has there been any change that you know of in the supply of coal since yesterday?"

(7) "Have you observed any change in the demand for coal since yesterday?"

(8) "Has the cost of producing coal gone up any since yesterday?"

2013½ (9) "Who fixes the price of Delaware, Lackawanna & Western coal at tide water?"

(10) "How do you account for the fact that the price circulars are uniform, if there is no agreement?"

(11) "Don't you know from your experience and knowledge of the business that the increase in wages will not make a difference of over fifteen cents a ton in the cost of producing anthracite coal?"

The motion to require answers to these questions is denied.

(Endorsed:) Circuit court of the United States for the southern district of New York. In the matter of petition Interstate Commerce Commission, etc., vs. Philadelphia & Reading Railway Co., et al. Opinion, Lacombe, C. J., U. S. circuit court. Filed Jun. 12, 1903, southern district New York. John A. Shields, clerk.

2014 At a term of the circuit court of the United States, for the southern district of New York, held at the post-office building in the borough of Manhattan, city of New York, on the 10th day of June, 1903.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of the petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

WILLIAM RANDOLPH HEARST, PETITIONER AND COMPLAINANT,
against
PHILADELPHIA & READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Co., defendants.

The Interstate Commerce Commission having duly filed a petition to the judges of the circuit court of the United States for the southern district of New York for an order, or orders, requiring David G. Baird,

Fred F. Chambers, George O. Waterman, G. A. Richardson, E. B. Sturges, Orlando C. Post, George F. Baer, E. C. Hebbard, Eben B. Thomas, William H. Truesdale, Samuel T. Peters, and W. G. Brown to appear before said Commission and make full answer to questions heretofore refused to be answered by said persons, and requiring said persons to produce before said Interstate Commerce Commission books, papers, and documents referred to and described in said petition and refused to be produced;

And an order having been duly made by the Hon. E. Henry
2015 Lacombe, United States circuit judge, dated June 2, 1903, on motion of Henry L. Burnett, United States attorney for the southern district of New York, upon said petition, requiring each of said persons to appear before the circuit court of the United States for the southern district of New York, at a term of said court to be held in room 124 in the post-office building in the city of New York, on the 10th day of June, 1903, at 12 o'clock noon, and show cause why said petition should not be in all respects granted, and why said order, or orders, should not be made;

And upon the return of the said order, the petition as to Samuel T. Peters having been withdrawn, and the petition that William H. Truesdale be required to answer the question "What elements of expense are included in the item of $81,321.65 for general expenses?" having also been withdrawn;

And at the time and place aforesaid each of said persons, except E. C. Hebbard, having duly appeared by counsel in opposition to the granting of said petition, and the questions involved in the said petition having been fully argued by the attorneys of the respective parties thereto, and the court being fully advised in the premises;

Now, on reading and filing said petition, the answers thereto and the record of the proceedings before the Interstate Commerce Commission at the several hearings;

It is ordered, adjudged, and decreed that the said petition be in all respects denied, and that the same be, and it hereby is, dismissed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the petition of the Interstate Commerce Commission, etc., etc. Order. Henry L. Burnett, United States attorney, attorney for . U. S. circuit court, southern district of New York. Filed Jul. 1, 1903. John A. Shields, clerk.

2016 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

WILLIAM RANDOLPH HEARST, PETITIONER AND COMPLAINANT,
against
PHILADELPHIA & READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, defendants.

Now comes the Interstate Commerce Commission, by Henry L. Burnett, United States attorney for the southern district of New York, representing the Interstate Commerce Commission pursuant to the statute in such case made and provided, and by the direction of the Honorable Philander C. Knox, Attorney-General of the United States, and prays for the allowance of an appeal to the Supreme Court of the United States from the order of the court entered herein dismissing said petition.

HENRY L. BURNETT,
United States Attorney, Southern District of New York,
Atty. for Appellant.

2017 The aforesaid appeal is hereby allowed.
Dated New York, July 1, 1903.

E. H. LACOMBE,
Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses and the production of papers and documents. Petition for appeal. Henry L. Burnett, United States attorney, attorney for appellant. Service of a copy of the within petition for appeal is hereby admitted. Dated N. Y., July 21, 1903. Geo. F. Brownell, atty. for E. B. Sturges and S. A. Richardson. Received copy of within petition of appeal this 21st day of July, 1903. Walter M. Ross, atty. for F. F. Chambers, O. C. Post, and W. H. Truesdale. Received a copy of the within paper Jul. 21, 1903, De Forest Brothers. Due service admitted. Phila., July 21, 1903. J. D. Campbell, for Wm. G. Brown and George F. Baer, Francis I. Gowen, atty. for Eben B. Thomas and David G. Baird. U. S. circuit court, southern district of New York. Filed Jul. 1, 1903. John A. Shields, clerk.

2018 Circuit court of the United States, southern district of New York.

In the matter of the petition of the Interstate Commerce Commission for an order or orders requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

WILLIAM RANDOLPH HEARST, PETITIONER AND COMPLAINANT,
against
PHILADELPHIA & READING RAILWAY COMPANY, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, defendants.

Before the Interstate Commerce Commission.

Now comes the Interstate Commerce Commission, represented by Henry L. Burnett, United States attorney for the southern district of New York, and presents these asignments of error:

First. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring David G. Baird, secretary of the Lehigh Valley Coal Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Second. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring George O. Waterman, secretary of the Lehigh & Wilkesbarre Coal Company, to produce all contracts for the purchase of anthracite coal entered into since
2019 January 1st, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Third. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring W. G. Brown, secretary of the Philadelphia & Reading Coal and Iron Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Fourth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring G. A. Richardson, secretary of the Hillside Coal & Iron Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Fifth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Fred F. Chambers, secretary of the Delaware, Lackawanna & Western Railroad Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Sixth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring E. B. Sturges to produce a contract between the Clarence Coal Company and the Hillside Coal and Iron Company for the sale to the latter company of anthracite coal and a contract between the Pine Hill Coal Company and the Philadelphia & Reading Coal and Iron Company for the sale to the latter company of anthracite coal.

Seventh. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Orlando C. Post, auditor of the Delaware, Lackawanna & Western Railroad Company, to
2020 produce the original vouchers for the months of April and May, 1901, and April and May, 1902, and January and February, 1903, showing transactions between the Delaware, Lackawanna & Western Railroad Company and third parties for the purchase of anthracite coal by said railroad company from said third parties.

Eighth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring George F. Baer to produce an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Reading Company; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Lehigh Valley Railroad Company; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Delaware, Lackawanna & Western Railroad Company; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Central Railroad Company of New Jersey; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the New York, Susquehanna & Western Railroad Company.

Ninth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring E. C. Hebbard, secretary of the Guaranty Trust Company of New York, to produce all contracts between the Guaranty Trust Company of New York, as trustee, and the Temple Iron Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the New York, Susquehanna & Western Railroad Company, the Erie Railroad Company, and the Reading Company, since January 1, 1899.

Tenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question "Are the prices of anthracite coal at tide water fixed
2021 by agreement between the presidents of these different coal companies?"

Eleventh. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Who fixed the price of coal of the Hillside Coal and Iron Company and the Pennsylvania Coal Company that was sold at tide water during your connection with those properties?"

Twelfth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Who fixes the price of the coal of the Lehigh Valley Coal Company that is sold at tide water?"

Thirteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business of selling coal in accordance with those same ideas, so as to avoid what you regard as reckless competition?"

Fourteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "You maintain a sales department of your own at the city of New York, don't you?"

Fifteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Do you consider that twenty cents a ton commission, that you have charged here against the cost and expense of mining, is a fair and reasonable charge for commission?"

Sixteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Well, when coal is sold at tide water at $4
2022 a ton and you pay out 65% of it to the private operator, you lose money on each transaction, do you not, if you charge up $1.55, or the full tariff rate, against the transportation of that coal?"

Seventeenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "What is the price of coal to-day, sold by the D., L. & W. at tide water?"

Eighteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "What has happened to make the advance? Has there been any change that you know of in the supply of coal since yesterday?"

Nineteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "Have you observed any change in the demand for coal since yesterday?"

Twentieth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "Has the cost of producing coal gone up any since yesterday?"

Twenty-first. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "Who fixes the price of D., L. & W. coal at tide water?"

Twenty-second. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "How do you account for the fact that the price circulars are uniform if there is no agreement?"

Twenty-third. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question "Don't you know from your experience
2023 and knowledge of the business that the increase in wages will not make a difference of over fifteen cents a ton in the cost of producing anthracite coal?"

HENRY L. BURNETT,
United States Attorney, Southern District of New York.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the petition of the Interstate Commerce Commission, etc., etc. Assignments of error. Henry L. Burnett, United States attorney, attorney for appt. Allowed and ordered on file July 1, 1903. E. H. Lacombe. U. S. circuit court, southern district of New York. Filed Jul. 1, 1903. John A. Shields, clerk.

2024 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To David G. Baird, Fred F. Chambers, George O. Waterman, G. A. Richardson, E. B. Sturges, George F. Baer, Orlando C. Post, Eben B. Thomas, William H. Truesdale, W. G. Brown, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington, District of Columbia, on the 11th day of August, 1903, pursuant to an order granting an appeal from an order filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Interstate Commission is plaintiff and you are defendants, to show cause, if any there be, why the order mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city of New York, in the district and circuit above named, this 16th day of July, in the year of our Lord one thousand nine hundred and three, and of the Independence of these United States the one hundred and twenty-eighth.

E. HENRY LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

2025 Service of the within citation is hereby admitted.
Dated July 21, 1903.

GEO. F. BROWNELL,
Atty. for E. B. Sturges and G. A. Richardson.

Received copy of the within citation this 21st day of July, 1903.

WALTER W. ROSS,
Atty. for F. F. Chambers, O. C. Post, and W. H. Truesdale.

Received a copy of the within paper Jul. 21, 1903.

DE FOREST BROTHERS,
Attys. for Geo. O. Waterman.

Service admitted.
Phila., July 21, 1903.

J. D. CAMPBELL,
Atty. for Wm. G. Brown and George F. Baer.

FRANCIS I. GOWEN,
Atty. for Eben B. Thomas and David G. Baird.

(Endorsed:) United States Supreme Court. In the matter of the petition of the Interstate Commerce Commission, etc. William R. Hearst, petitioner & complainant, vs. Philadelphia & Reading Railway Company and others, defendants. Citation. U. S. circuit court, southern district of New York. Filed Jul. 22, 1903. John A. Shields, clerk.

2026 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 2025, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled: In the matter of petition of the Interstate Commerce Commission for an order, or orders, requiring the attendance and testimony of witnesses, and the production of books, papers, and documents. William Randolph Hearst, petitioner and complainant, against Philadelphia & Reading Railway Company, Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railway Company, Delaware & Hudson Company, Pennsylvania Railroad Company, and Baltimore & Ohio Railroad Company, defendants, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 7th day of August, in the year of our Lord one thousand nine hundred and three, and of the independence of the said United States the one hundred and twenty-eighth.

[SEAL.] JNO. A. SHIELDS, *Clerk.*

(Indorsed:) United States circuit court of appeals for the second circuit. In the matter of the petition of the Interstate Commerce Commission, &c. Transcript of record from the circuit court of the United States for the southern district of New York.

(Indorsement on cover:) File No. 19060. S. New York C. C. U. S. Term No. 409. The Interstate Commerce Commission, appellant, vs. David G. Baird, Fred F. Chambers, George O. Waterman, et al. Filed August 29th, 1903. File No. 19060.

In the Supreme Court of the United States

OCTOBER TERM, 1925.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
DAVID G. BAIRD ET AL., APPELLEES. } No. 409.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
DAVID G. BAIRD, FRED. F. CHAMBERS, George O. Waterman, G. A. Richardson, E. B. Sturges, George F. Baer, Orlando C. Post, Eben B. Thomas, William H. Truesdale, W. G. Brown, appellees. } No. 409.

MOTION TO ADVANCE.

The Solicitor-General, at the request and on behalf of the Interstate Commerce Commission, appellant in the above-entitled cause, respectfully moves the court to advance the same on the docket for hearing during the present term on the following grounds:

1. The case is a proceeding under section 12 of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," as amended March 2, 1889, and February 10, 1891, and under section 3 of the act of Congress approved February 19, 1903, entitled "An act to further regulate

commerce with foreign nations and among the States," for the enforcement of orders of appellant, the Interstate Commerce Commission, against the appellees, requiring the appellees, recalcitrant witnesses, to produce contracts and to answer questions deemed by the appellant to be material and necessary to the determination of issues in a pending cause before the appellant, and deemed by the appellant to be necessary to enable it to perform its functions and to inform appellant as to the manner and method in which the business of common carriers is conducted, and to enable appellant to obtain the full and complete information necessary to enable appellant to perform the duties and carry out the objects for which it was created.

2. The case is one prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission and is a case to which, pursuant to section 3 of said act of February 19, 1903, the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, and all other acts having a like purpose, apply. One object of said act of February 19, 1903, is the expedition of proceedings instituted by the Interstate Commerce Commission on the ground of the public interests affected.

3. The cause pending before the appellant, the Interstate Commerce Commission, wherein the appellees have refused to produce contracts and answer questions, required as aforesaid, is one of unusual and general interest and importance in that—

(*a*) Said cause involves the reasonableness and justice of freight rates on anthracite coal maintained by all railroads connecting the anthracite coal regions, in the State of Pennsylvania, with tide-water points;

(*b*) Said cause also involves the question whether the said railroads connecting the anthracite coal fields of Pennsylvania with tide-water points practice discrimination against independent producers and shippers of anthracite coal, resulting in the enhancement of the price of anthracite coal, a necessary of life in general use throughout the eastern States;

(*c*) Said cause is awaiting final submission and argument before the appellant, the Interstate Commerce Commission, and it is claimed by the respondents therein that the decision of the issues therein must be governed by the correctness of the ruling at circuit, which is the basis of the order herein appealed from.

4. The case is of unusual and general importance irrespective of the issues involved in said cause pending before the appellant, the Interstate Commerce Commission, in that the refusal of the appellees to produce contracts and answer questions

in said cause challenges the right and power of the Interstate Commerce Commission, which is a bureau or department of the Government, to compel the production of evidence by it deemed to be relevant in determining the reasonableness and justice of freight rates, and deemed by it to be necessary in order to enable it to obtain the information required for the proper performance of its duties and for the carrying out of the provisions of law under which it was created and by which it is governed.

HENRY M. HOYT,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
DAVID G. BAIRD, FRED F. CHAMBERS, George O. Waterman, et al.
No. 409.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES ON THE MOTION TO DISMISS THE APPEAL AND ON THE MERITS.

STATEMENT OF THE CASE.

Pursuant to section 13 of the act to regulate commerce (24 Stat. L., 379), which provides that "*any person* * * * complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof may apply to said Commission by petition," and that no such complaint "shall at any time be dismissed because of the absence of direct damage to the complainant," W. R. Hearst, on October 31, 1902, filed with the Interstate Commerce Commission a complaint against

the Philadelphia and Reading Railway Company, Lehigh Valley Railroad Company, Delaware, Lackawanna and Western Railroad Company, Central Railroad Company of New Jersey, New York, Susquehanna and Western Railroad Company, Erie Railroad Company, New York, Ontario and Western Railway Company, Delaware and Hudson Company, Pennsylvania Railroad Company, and Baltimore and Ohio Railroad Company, charging:

> That the defendants above named are common carriers severally engaged in the transportation of passengers and property between points in different States of the United States, and particularly are engaged in the transportation of anthracite and bituminous coals mined in the States of Pennsylvania, Maryland, and West Virginia, and shipped as interstate traffic over their several routes or lines, and as such common carriers are subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.
>
> That the rates charged and exacted by said defendants and each of them for the transportation of anthracite coal in carloads from points in the anthracite coal region of Pennsylvania to New York City and New York Harbor points and internal points of destination in the State of New York, to Boston, Boston points, and other points in

the New England States, to Baltimore and other points in the State of Maryland, and to Washington, in the District of Columbia, are unreasonable and unjust, and subject consumers of that commodity at such points of destination, and producers of such coal who are not common carriers or corporations owned and controlled by common carriers, to undue and unreasonable prejudice and disadvantage in favor, and to the undue and unreasonable preference and advantage, of said defendants and companies or corporations under their control, in violation of sections 1 and 3 of said act to regulate commerce.

That the rates charged and exacted by the defendants for the transportation of anthracite coal, as aforesaid, are also relatively unreasonable and unjust, and unjustly discriminating and unduly prejudicial to the interests of dealers and consumers of that commodity as compared with the rates contemporaneously charged and enforced by said defendants for the transportation of bituminous coal for much longer distances, and to all the points of destination hereinabove mentioned, and also as compared with defendants' rates and charges on other carload freight traffic generally, all of which is in violation of sections 1, 2, and 3 of said act to regulate commerce. That the defendants' schedules of rates and charges, as on file with this Commission, are hereby referred to and made part of this petition and complaint.

That the defendants, Lehigh Valley Railroad Company; Central Railroad Company of New Jersey; Delaware, Lackawanna and Western Railroad Company; Erie Railroad Company; New York, Susquehanna and Western Railroad Company, and the Philadelphia and Reading Railway Company, are, in the absence of agreement, natural competitors in the business of transporting anthracite coal from the anthracite coal fields in Pennsylvania to tide water at New York Harbor; two of said defendants, the Lehigh Valley Railroad Company and the Central Railroad Company of New Jersey, being substantially parallel lines.

That during the years 1896, 1897, 1898, 1899, 1900, and 1901 the said six defendants last named, by an agreement with one another and by combination between one another, pooled, and having during the year 1902, by an agreement and combination as aforesaid, pooled freights and freight traffic in anthracite coal so as to divide the same between their different lines in agreed proportions, and have divided between them the aggregate or net proceeds of their earnings from the trasportation of anthracite coal in agreed proportions, in violation of section 5 of the act to regulate commerce. (Rec., pp. 39–40.)

On April 21, 1903, the Commission met in the city of New York to hear this complaint and simultaneously to make a general investigation into the management of the business of certain common

carriers subject to the act to regulate commerce, so as to inform itself as to the manner and method in which said business is conducted, and obtain from said carriers the full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created. (Sec. 12 of act to regulate commerce, as amended Mar. 2, 1899, and Feb. 10, 1891.)

The examination of witnesses was conducted by counsel for complainant on behalf of the latter's complaint and by members of the Commission on behalf of the general investigation.

In the course of the investigation several witnesses refused to produce contracts and to answer questions which the Commission considered and ruled to be germane to the inquiry, and necessary to enable it to discharge its duty and execute and enforce the provisions of the act to regulate commerce by informing itself as to the manner and method in which the business of common carriers subject to said act is conducted. (Petition, record, p. 14.) Thereupon, in pursuance of section 12 of the aforesaid act to regulate commerce, as amended, the Commission, under the direction of the Attorney-General, filed a petition in the United States circuit court for the southern district of New York, praying that the recalcitrant witnesses be compelled to produce the contracts and to answer the questions propounded. The nature of this evidence will appear more fully later on. The wit-

nesses filed separate answers to the petition, advancing various grounds why they should not be compelled to produce the contracts and answer the questions. These grounds may fairly be collected under four heads:

First. That the contracts and questions do not relate to any subject which the Interstate Commerce Commission is authorized, or could constitutionally be authorized, to investigate.

Second. That the contracts relate to the private business of persons not parties to the proceeding before the Interstate Commerce Commission.

Third. That the witnesses are protected from producing the contracts and answering the questions by the fourth, fifth, and tenth amendments to the Constitution of the United States.

Fourth. That the contracts and questions are not germane or relevant to the subjects under investigation by the Commission.

The circuit court dismissed the petition on the ground that the evidence sought was not germane or relevant to the questions before the Commission. An appeal was then taken direct to this court under section 3 of the act of February 19, 1903 (32 Stat. L., 848), and section 2 of the act of February 11, 1903 (32 Stat. L., 823). And in the view of the Government the case is also appealable direct to this court under section 5 of the circuit court of appeals act of 1891, as it "involves the construction of the Constitution of the United States," the defendants, by their answers, having

invoked the protection of the fourth, fifth, and tenth amendments to the Federal Constitution. Appellees, however, have moved to dismiss the appeal on the ground that there is no provision of law under which it can be taken direct to this court.

The evidence in controversy consists of:

I.

THE SO-CALLED PURCHASE CONTRACTS.

Contracts entered into since January 1, 1901, between the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Philadelphia and Reading Coal and Iron Company, the Hillside Coal and Iron Company, the Delaware, Lackawanna and Western Railroad Company, respectively, and producers of anthracite coal or owners or operators of anthracite mines for the alleged purchase of anthracite coal, said producers, owners, and operators being commonly known as independent operators; and a contract between the Clarence Coal Company and the Hillside Coal and Iron Company purporting to be for the sale to the latter company of anthracite coal; and a contract between the Pine Hill Coal Company and the Philadelphia and Reading Coal and Iron Company purporting to be for the sale to the latter company of anthracite coal.

The refusal of the circuit court to compel the custodians of these contracts to produce them before the Interstate Commerce Commission is the subject of assignments of error numbered one to

six, inclusive. The issues raised by these assignments will be better comprehended in the light of the following additional facts. With the exception of the Delaware, Lackawanna and Western and the Delaware and Hudson, none of the so-called coal-carrying railroads named in the complaint to the Interstate Commerce Commission can, under the existing constitution and laws of Pennsylvania, engage in the business of mining and selling coal; but the railroads have nevertheless done so indirectly through the instrumentality of independent corporations whose stock they own. Thus, the Lehigh Valley Railroad Company owns all of the stock of the Lehigh Valley Coal Company (Rec., p. 296), and the same gentleman, Mr. E. B. Thomas, is president of both companies (Rec., p. 591); the Central Railroad of New Jersey owns nine-tenths of the shares of the Lehigh and Wilkesbarre Coal Company, and the same gentleman, Mr. George F. Baer, is president of both companies (Rec., p. 305); and the Erie Railroad Company owns a large majority of the shares of the Hillside Coal and Iron Company (Rec., p. 312) and practically all of the stock of the Pennsylvania Coal Company (Rec., p. 591). In the case of the Philadelphia and Reading Railway Company, the leading coal-carrying road, the arrangement is slightly different in form, but it amounts to the same thing: A holding company, now known as the Reading Company, holds all the stock of the Philadelphia and Reading Railway

Company and of the Philadelphia and Reading Coal and Iron Company, a coal mining company, the same gentleman, Mr. George F. Baer, being president of the three companies. (Rec., pp. 420–423.)

The substantial identity between the railroads and the coal companies whose stock they owned respectively, is recognized in the opinion of the circuit court. (Rec., pp. 833, 834.)

The railroad companies and the coal companies are thus, for all practical purposes, one and the same, the latter simply being devices by means of which the former do indirectly that which the law prohibits them from doing directly. Together these coal-carrying railroads (and for convenience and brevity I include in this designation the Reading Company, the holding company which owns all of the stock of the Philadelphia and Reading Railway Company) control, the Delaware, Lackawanna and western and the Delaware and Hudson directly and the others indirectly through the coal companies, 96 per cent of all the unmined anthracite coal in the Pennsylvania fields, the Reading Company alone controlling 63 per cent. (Rec., p. 427.) The mines not controlled or operated by the coal companies in the interest of the railroad companies, as just described, are operated by individuals, firms, and corporations, commonly known as independent or individual operators.

The contracts of purchase involved in assignments of error one to five were thus between the coal companies, acting in the interest of the

respective railroads as vendees, and independent operators, as vendors; while those described in the sixth assignment were between the Delaware, Lackawanna and Western Railroad Company, acting in its own behalf, as vendee, and independent operators, as vendors. The evidence indicates that the contracts are all substantially alike, the important and material features common to all being (*a*) that the purchase price of prepared sizes of anthracite (being all sizes above pea coal) is fixed at 65 per cent of the average price realized at tide water by the railroad companies or the coal companies controlled by the railroad companies; (*b*) that the vendors will sell *all* their coal to the vendees, and (*c*) that shipments shall be made *as called for by the vendees*. (Rec., pp. 15–17.) Now, inasmuch as the coal companies are owned and controlled by and operated in the interest of the railroads, these agreements amount to this: That the railroads take the coal of the independent operators, transport it to tide water, and pay the operators 65 per cent of the price realized there, retaining 35 per cent, from which must be deducted the cost of selling, which the evidence shows to be from 10 to 20 cents a ton. (Rec., p. 511.)

The evidence, furthermore, shows that since January 1, 1901, the average market price of prepared sizes of anthracite coal, f. o. b., tide water, New York Harbor, has been at various times $4 per ton; and the tariffs filed with the Interstate Com-

merce Commission show that since January 1, 1901, the railroads whose business was being investigated by the Commission have charged, respectively, the following freight rates per ton for hauling prepared sizes of anthracite coal from the coal fields of Pennsylvania to tide water, f. o. b.:

Lehigh Valley Railroad, Hazleton to Jersey City, $1.65.

Delaware, Lackawanna and Western, Scranton to Hoboken, $1.60.

Central Railroad of New Jersey, Mauch Chunk to Hoboken, $1.75.

Philadelphia and Reading Railway, Shamokin to Hoboken, $1.75.

Philadelphia and Reading Railway, Shamokin to Port Reading, $1.55.

New York, Ontario and Western, Scranton to Weehawken, $1.60.

Erie Railroad, Carbondale to Jersey City, $1.75.

Whence it follows that when a railroad company, or a coal company owned by it, purchases coal from an independent operator, carries it to tide water, and sells it there for, say, $4 a ton (a price that has frequently prevailed in recent years) it pays the independent operator, under these contracts, 65 per cent of $4, or $2.60 a ton. The remainder, $1.40, less the cost of selling, which is from 10 to 20 cents a ton, is therefore the amount the railroad company really receives for transporting the coal. But this is less than the published tariff rates. And an independent operator who did not care to dispose of his coal in this way would have

to pay the published rates, which are from $1.55 to $1.75 a ton.

The vouchers described in the seventh assignment of error will not be considered separately because they relate to the so-called purchase contracts described in the fifth assignment of error, and are relevant or irrelevant according as the latter shall be viewed by the court.

II.

THE TEMPLE IRON COMPANY CONTRACTS.

There was a series of such contracts, all, however, connected and forming part of the same scheme.

1. Agreement dated February 27, 1899, between the firm of Simpson & Watkins, vendors, and the Temple Iron Company, vendee, whereby the latter acquired the collieries owned by the former, giving in payment therefor its capital stock and bonds, to wit, $2,260,000 in stock and $3,500,000 in bonds.

2. Agreement dated February 27, 1899, between the firm of Simpson & Watkins and the Guaranty Trust Company, whereby the former transferred to the latter the $2,260,000 of stock of the Temple Iron Company and $2,100,000 of the bonds of that company, which the said firm of Simpson & Watkins had accepted in payment for their collieries; receiving from the Guaranty Trust Company in return $3,238,396.66 in cash and certificates of beneficial interest in respect of $1,000,000 of the stock of the Temple Iron Company.

3. Six separate agreements, as follows, all dated February 27, 1899: (a) Agreement between the Temple Iron Company, the Guaranty Trust Company, and the Reading Company, whereby the Reading Company agreed (1) to purchase 29.96 per cent of the capital stock of the Temple Iron Company (practically all of which was then held by the Guaranty Trust Company), and to guarantee the payment of six per cent annual dividends on that proportion of said capital stock; and (2) to guarantee payment of 29.96 per cent of the bonded indebtedness, principal and interest, of the Temple Iron Company; (b) similar agreement between the Temple Iron Company, the Guaranty Trust Company, and the Lehigh Valley Railroad Company, in respect of 22.88 per cent of the stock and bonds of the Temple Iron Company; (c) similar agreement between the Temple Iron Company, the Guaranty Trust Company, and the Central Railroad Company of New Jersey, in respect of 17.12 per cent of the stock and bonds of the Temple Iron Company; (d) similar agreement between the Temple Iron Company, the Guaranty Trust Company, and the Delaware, Lackawanna and Western Railroad Company, in respect of 19.52 per cent of the stock and bonds of the Temple Iron Company; (e) similar agreement between the Temple Iron Company, the Guaranty Trust Company, and the Erie Railroad Company, in respect of 5.84 per cent of the stock and bonds of the Temple Iron Company; (f) similar agreement between the Temple

Iron Company, the Guaranty Trust Company, and the New York, Susquehanna and Western Railroad Company, in respect of 4.68 per cent of the stock and bonds of the Temple Iron Company.

4. Agreements dated April 10, 1899, between the Guaranty Trust Company and each of the railroad companies, providing additional means for enforcing the obligations undertaken by the railroad companies.

Copies of each of these four classes of contracts appear as exhibits to the answer of George F. Baer. (Record, pp. 73–91.)

This appeal does not raise any issue as to the admissibility of the contracts described under (1), (2), and (4) supra, but only as to the admissibility of those described under (3) supra; and the refusal of the circuit court to compel Mr. George F. Baer, president of the Temple Iron Company, to produce the latter in evidence before the Interstate Commerce Commission is the subject of the eighth assignment of error.

The motive of this transaction, in which six of the leading coal-carrying railroads joined hands so harmoniously, and its relations to the questions before the Commission will be better understood when it is stated that Simpson & Watkins, the vendors, and the largest and most powerful of the independent operators, had projected and were vigorously pushing the construction of a new line of railroad from the coal fields to the seaboard, which would have been a competitor of the exist

ing roads; but when their collieries were taken off their hands at a very handsome price their interest in the project abated, and it fell through.

The court below thus described the movement which led up to the Temple Iron Company contracts:

> It appears that heretofore certain coal operators and coal companies which were not owned or controlled by the defendants, being dissatisfied with the freight rates or with the manner in which the business of transportation was being conducted, came together for the purpose of building or securing the building of a new road from the coal regions where their mines were located to tide water. The defendants, being unwilling to meet the competition which such a new road would introduce, combined together and bought up the collieries of those who were promoting the new road. Thereupon the project of building such competing road was abandoned. The contracts in question are parts of the machinery by which this combination prevented the building of the new road.

III.

THE ORAL TESTIMONY.

Two of the witnesses before the Commission, namely, Mr. E. B. Thomas, president of the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company, and Mr. William H. Truesdale, president of the Delaware, Lackawanna and

Western Railroad Company, refused to give an swers to certain questions propounded them; and the refusal of the circuit court to compel them to answer is the subject of the remaining assignments of error, to wit:

> Tenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Are the prices of anthracite coal at tide water fixed by agreement between the presidents of these different coal companies?"
>
> Eleventh. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Who fixed the price of coal of the Hillside Coal and Iron Company and the Pennsylvania Coal Company that was sold at tide water during your connection with those properties?"
>
> Twelfth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Who fixes the price of the coal of the Lehigh Valley Coal Company that is sold at tide water?"
>
> Thirteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Eben B. Thomas to answer the question, "Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business of selling coal in accordance with those same ideas, so as to

avoid what you regard as reckless competition?"

Fourteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "You maintain a sales department of you own at the city of New York, don't you?"

Fifteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Do you consider that 20 cents a ton commission that you have charged here against the cost and expense of mining is a fair and reason able charge for commission?"

Sixteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Well, when coal is sold at tide water at $4 a ton and you pay out 65 per cent of it to the private operator you lose money on each transaction, do you not, if you charge up $1.55, or the full tariff rate, against the transportation of that coal?"

Seventeenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "What is the price of coal to-day sold by the Delaware, Lackawanna and Western at tide water?"

Eighteenth. The court erred in dismissing the petition of the Interstate Commerce

Commission for an order requiring William H. Truesdale to answer the question, "What has happened to make the advance? Has there been any change that you know of in the supply of coal since yesterday?"

Nineteenth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Have you observed any change in the demand for coal since yesterday?"

Twentieth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Has the cost of producing coal gone up any since yesterday?"

Twenty-first. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Who fixes the price of Delaware, Lackawanna and Western coal at tide water?"

Twenty-second. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "How do you account for the fact that the price circulars are uniform if there is no agreement?"

Twenty-third. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring William H. Truesdale to answer the question, "Don't you know, from your expe-

> rience and knowledge of the business, that the increase in wages will not make a difference of over 15 cents a ton in the cost of producing anthracite coal?"

Before discussing whether or not the circuit court erred, as the Government contends, in refusing to compel the witnesses to produce the contracts described and to answer the questions set forth, it will be necessary to consider the jurisdictional question raised by the motion to dismiss, and the following argument will be addressed chiefly, though not wholly, to that branch of the case, the brief of Mr. Carlisle, counsel for the Interstate Commerce Commission, having very fully discussed the merits of the appeal.

THE ARGUMENT ON THE MOTION TO DISMISS THE APPEAL.

The motion to dismiss this appeal for want of jurisdiction is based on the ground that there is no provision of law under which the appeal could be taken direct to this court from the decree of the circuit court for the southern district of New York. It is believed, however, that there are two separate and distinct provisions of law, under either of which this court would have jurisdiction of the appeal.

1. Section 2 of the act of February 11, 1903, hereafter called the "expediting act," provides:

> That in *every suit in equity* pending or hereafter brought in any circuit court of the United States under any of said acts wherein the United States is complainant, including

> cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof. * * *

And in section 3 of the act of February 19, 1903, entitled "An act to further regulate commerce with foreign nations and among the States," it is enacted that the above provision "shall apply to *any case* prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission."

The change in phraseology from "every suit in equity" to "any case," without the limitation "in equity," is significant of the wider field covered by the later provision and will be commented upon presently.

The present proceeding is a "case" (*Brimson's case*, 154 U. S., 478), and it is being "prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission." It would seem almost self-evident, therefore, that it is appealable directly to this court under the provisions quoted from the act of February 11 and 19, 1903, respectively, and any other result would tend to frustrate the purpose of Congress in passing these expediting acts, which was to facilitate the enforcement of the acts to regulate commerce and the Federal antitrust act.

The hearing and investigation by the Interstate Commerce Commission out of which this proceed-

ing grew has been interrupted and the Commission's judgment delayed by the refusal of certain witnesses to produce evidence, which the Commission regarded as competent, on the grounds that it is irrelevant and that they are protected from producing it by the Constitution of the United States. As the Commission's investigations usually constitute the first step in the enforcement of the acts to regulate commerce, the continuance of such investigations pending the decision of issues of this kind delays just so long the enforcement of those acts; and it was to shorten such delays as much as possible that the expediting acts were passed, doing away with intermediate appeals to the circuit courts of appeals in "*any case* prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission." The present proceeding, therefore, not only falls within the very letter of those enactments, but also within their spirit and purpose.

But an attempt has been made to show, by a laborious process of construction, that the word "case" in the above-quoted passage from the act of February 19, 1903, means "suit in equity," and therefore does not embrace a proceeding like the present one. It is, however, an elementary canon of construction that where the legislature has used words which have a well-understood and clearly defined meaning, such as the words "any case"

(*Brimson's case, supra*), it must be presumed to have intended that that meaning should be attributed to them, and construction can not be resorted to for the purpose of giving them a different meaning. Moreover, it is not to be assumed that in this legislation of February 19, 1903, Congress used words unmeaningly. On the contrary, every presumption is in favor of the view that the marked change in phraseology from "every suit in equity" in the earlier statute to the much more comprehensive words "any case" in the later statute was designed and intentional. It was evidence of the purpose of Congress to enlarge the operation of the earlier act; and it is pertinent to ask, How could that purpose be more plainly or aptly expressed?

Said Chief Justice Woodward in *Rich* v. *Keyser* (54 Pa. St., 86, 89):

> Indeed, the words of a statute, when unambiguous, are the true guide to the legislative will. That they differ from the words of a prior statute on the same subject is an intimation that they are to have a *different and not the same* construction, for it is as legitimate a use of the legislative power to alter prior statutes as to displace the common law.

And in *Endlich on the Interpretation and Construction of Statutes* the principle is stated at page 534 as follows:

> As the same expression is presumed to be used in the same sense throughout an act

> *or a series of cognate acts*, so a *difference of language* may be prima facie regarded as indicative of a *difference of meaning*.

Finally, one of the aspects of the great case of *Hunter* v. *Martin* (1 Wheat., 304, 337) is peculiarly in point here. I say peculiarly, because not only was it attempted there as here to qualify and restrain, by construction, the application of a word which had a clear and well-understood meaning, but the attempt was made with reference to this very word "case," and the manner in which this court disposed of the contention at that time may be of some assistance now. The argu ment was that in determining the appellate juris diction of this court, the term "all cases," as used in the third article of the Constitution, did not mean "all cases" but only "some cases," that is, did not include cases in the State courts, but only those in the lower Federal courts. But said Mr. Justice Story, speaking for the court:

> The appellate power *is not limited by the terms of the third article* to any particular courts. The words are "the judicial power (which includes appellate power) shall extend to all cases," etc., and "in all other cases before mentioned the Supreme Court shall have appellate jurisdiction." It is the case then, and not the court that gives the jurisdiction. If the judicial power extends to the case, it will be in vain to search in the *letter* of the Constitution for any *qualification* as to the tribunal where it depends. It is

> incumbent, then, upon those who assert such a qualification to show its existence by *necessary implication*. If the text be clear and distinct, no restriction upon its plain and obvious import ought to be admitted, *unless the inference be irresistible*.

The contention of the opposing counsel appears to turn wholly on the fact that that part of section 3 of the act of February 19, 1903, which the Government claims authorizes the appeal, is introduced by the word "provided." The argument is that that makes it a *proviso* to section 3, by reason whereof it should be construed to apply only to the class of cases described in that section, namely, suits in equity. It is not likely that this court will be much impressed with the force of that argument. It has come to be a very common thing for legislatures to use the word "provided" in a loose, inartificial sense, rather than in the technical sense in which it is used in works on statutory construction. The office of a "proviso," technically speaking, is, as said by Mr. Justice Story in the case mentioned by counsel for appellants (*Minis* v. *United States*, 15 Pet., 423), "either to exempt something from the enacting clause or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it as extending to cases not intended by the legislature to be brought within its purview."

Now, a glance at section 3 of the act of February 19, 1903, will satisfy the mind that the passage beginning with the word "provided" performs

none of these offices. It does not, even accepting the construction put upon it by opposing counsel, exempt, qualify, restrain, or exclude anything that precedes it; on the contrary, it adds to what went before; it is something additional; it extends to a new field. It is not, therefore, in reality, a proviso in the strict sense, and the fact that it is introduced by the word "provided" does not make it such. In short, it should be construed as if the word "provided" were not there, or as if it began "be it further enacted," or stood as a separate section, because it is an affirmative, independent enactment.

In the very recent case of the *Chesapeake and Potomac Tel. Co.* v. *Manning*, 186 U. S., 238, 242, precisely the same argument as has been made here, based on precisely the same use of the word "provided," was pressed upon this court and rejected. The legislation in controversy there was a so-called proviso in a section of an appropriation act making provision for the expenses of the government of the District of Columbia (act of June 30, 1898; 30 Stat. L., 525, 538). The entire section will be quoted, so that the complete parallel between that case and this may be seen at a glance:

> TELEGRAPH AND TELEPHONE SERVICE.
>
> For superintendent, one thousand six hundred dollars; electrician, one thousand two hundred dollars; three telegraph operators, at one thousand dollars each; three

telephone operators, at six hundred dollars each; expert repair man, nine hundred and sixty dollars; three repair men, at seven hundred and twenty dollars each; two laborers, at four hundred dollars each; in all, eleven thousand five hundred and twenty dollars.

For general supplies, repairs, new batteries and battery supplies, telephone rental and purchase, wire for extension of the telegraph and telephone service, repairs of lines and instruments, purchase of poles, tools, insulators, brackets, pins, hardware, cross arms, ice, record books, stationery, printing, purchase of harness, washing, blacksmithing, forage, extra labor, new boxes, and other necessary items, eleven thousand five hundred dollars: *Provided*, That from and after the passage of this act it shall be unlawful for any person or any telephone company doing business in the District of Columbia to charge or receive more than fifty dollars per annum for the use of a telephone on a separate wire; forty dollars for each telephone, there being not more than two on a wire; thirty dollars for each telephone, there being not more than three on a wire, and twenty-five dollars for each telephone, there being four or more on the same wire.

Mr. Justice Brewer, who delivered the opinion of the court, thus stated and disposed of the contention that that part of the section introduced by the word "provided" constituted a proviso, technic-

ally speaking, and was therefore to be construed only as a qualification of, or in subordination to, what preceded it:

> In its answer defendant pleaded that this legislation [that is, that part of the above-quoted section beginning "*provided*"] "has no application to any individual desiring telephone service, but applies only to such service as may be rendered for the public to the District of Columbia, for the service rendered to said District for fire alarm, police, and other public purposes." This defense is undoubtedly based on the fact that the paragraph in which this proviso is found, entitled "telegraph and telephone service," consists solely of appropriations for salaries and supplies in connection with telegraph and telephone service. As the paragraph, therefore, deals solely with public expenditures, *the contention is that the proviso is a qualification of such public expenditures.*" As said by Mr. Justice Story, in *Minis* v. *United States*, 15 Pet., 423, 445:
>
> "The office of a proviso generally is either to except something from the enacting clause, or to qualify or restrain its generalities, or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview."
>
> See also *Austin* v. *United States*, 155 U. S., 417, 431.
>
> *While this is the general effect of a proviso, yet in practice it is not always so limited.*

As said in *Georgia Banking Company* v. *Smith*, 128 U. S., 174, 181:

"The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of a statute, or from some provisions of it, or to qualify the operation of the statute in some particular. But it is often used in other senses. It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them to precede their proposed amendments with the term 'provided,' so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences."

In view of the general language of this proviso, it is not strange that appellant has not pressed this defense upon our consideration, and we are informed by counsel for the appellee that it was not called to the attention of the lower courts. We notice it only as leading up to a matter which is now presented.

I append references to several of the many instances in which the word "provided" has been used by Congress, not to introduce a technical proviso, but to introduce new legislation, general in its operation, and not limited to the subjects

referred to in the act or section of which it forms a part:

(*a*) Act of May 31, 1872, for relief of John Potts (17 Stats., 195).

(*b*) Army appropriation act of July 16, 1874 (18 Stats., 72), containing a proviso concerning the traveling expenses of any person employed under the United States.

(*c*) The legislative, executive, and judicial appropriation act of March 3, 1875 (18 Stats., 351), containing a proviso fixing the fees for money orders.

(*d*) Joint resolution of March 3, 1875, for relief of Lowell A. Chamberlain (18 Stats., 525).

(*e*) The deficiency appropriation act of March 3, 1900 (31 Stats., 1023), containing a proviso in regard to the settlement of claims growing out of Government transportation over certain Pacific railroads.

But suppose it were conceded that the so-called proviso to section 3 of the act of February 19, 1903, applied only to the class of proceedings described in that section, as opposing counsel contend. How could that help them? The most that can be said of the proceedings provided for in that section is that they are of the nature of equitable proceedings. They can not be said to be suits in equity, strictly speaking, for the very terms of the act are that, after the filing of the petition, "it shall be the duty of the court *summarily* to inquire into the circumstances, * * * *without the formal pleadings and proceedings applicable to ordinary suits*

in equity." And the learned counsel for the appellees, Baer, Brown, Waterman, Thomas, and Baird, recognized the distinction when they referred to the proceedings in question, at page 12 of their brief, on the motion to dismiss, as "*the particular class of equitable proceedings* authorized by the act containing this proviso." Now, it being admitted that the proceedings described in section 3 of the act of February 19, 1903, are not technical suits in equity, but merely statutory proceedings of the nature of equitable proceedings, it would seem clearly to follow that the proceeding at bar comes within the purview of that section, because it is of the nature of a proceeding in equity rather than at common law. It was, to point out some of its equitable characteristics, instituted by a *petition*, to which *answers* were filed, and the review proceedings have been treated as an *appeal*, not as a writ of error. The proceeding, indeed, is very much like a bill for discovery.

2. This case is also appealable directly to this court under section 5 of the circuit court of appeals act of 1891, as it "involves the construction or application of the Constitution of the United States." That section provides:

> SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:
>
> *In any case that involves the construction or application of the Constitution of the United States.*

> In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

In answer to the petition to compel the production of the evidence sought by the Interstate Commerce Commission, the respondents below maintained not only that the evidence was irrelevant but also that they were protected from producing it by the fourth, fifth, and tenth amendments to the Constitution of the United States. And to show how real and substantial the constitutional issue is and how definitely and directly it is involved in the case, I quote the following passage from the answer of George F. Baer, one of the respondents (Rec., p. 64):

> This respondent is further advised, and so alleges and charges, that in case it shall be held that the said act to regulate commerce confers upon the Commission power to require, by subpœna or otherwise, the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents not *directly and solely* relating to matters of commerce between the States to be inquired into pursuant to the provisions of the said act, then the said act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States and in derogation of the right of this respondent and of the corporation of which

he is an officer and of which the said Guaranty Trust Company is the depository to have their private books and private affairs protected from unreasonable search or seizure. And in case it shall be held that the said act confers authority on said Commission to call for documents or testimony which shall prove or be held to prove the commission of acts which would subject any of the parties to any of the penalties imposed by and under the act to regulate commerce, then the said act is unconstitutional and void, as being in direct violation of the provisions of the fifth amendment to the Constitution of the United States and in derogation of the right of all of the said parties to be protected from the production of evidence to sustain a penal forfeiture.

And further, that the assumption of such power and authority on the part of the Congress of the United States is in violation of the tenth amendment to the Constitution providing that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

It would seem, therefore, that if there is such a thing as a "case that involves the construction or application of the Constitution of the United States," this is one. But it is contended not to be such because the constitutional question was not "*decided* by the court below," which, being of opinion that the evidence was irrelevant, decided the case on that point. Suppose, however, that it shall be

found, upon review, as we believe it will be, that this evidence, or certainly some of it, is relevant, then the question of constitutional construction must be passed upon. That question, therefore, is in the strictest sense *involved* in the case as a controlling question, and it is a real and substantial question, definitely and sufficiently stated on the record, and the circuit court was expressly asked to pass upon it. It is submitted that these facts are sufficient, under the decisions of this court now to be examined, to warrant a direct appeal under section 5 of the circuit court of appeals act, and that it is not necessary to show that the circuit court actually *determined* the constitutional question.

(*a*) *Cornell* v. *Green*, *163 U. S.*, *75*, *78*.—This case is cited in the briefs of all of the opposing counsel in support of their motion to dismiss, and the Government also is quite willing to rest its case on that judgment. Mr. Justice Gray, who delivered the opinion of the court, after stating that "the appellate jurisdiction of the court is sought to be maintained upon the single ground that the case 'involves the construction or application of the Constitution of the United States' within the meaning of the judiciary act of March 3, 1891," proceeded to point out the circumstances under which a direct appeal would lie under that provision:

> But in order to bring a case within this clause of the act, the circuit court must have

> construed the Constitution or applied it to the case, *or must at least have been requested and have* declined or *omitted to construe or apply it.* No construction or application of the Constitution can be said to have been involved in the judgment below when no construction or application thereof was either expressed *or asked for.*

The appeal in the case was dismissed, it is true, but because—

> The Constitution of the United States *is not mentioned* in the bill of Cornell, or in the demurrer of the defendant, or in the decree or the opinion of the court. The case appears to have been treated throughout as depending upon a question of chancery practice, not of constitutional right. The first indication of anything like an intention on the part of the plaintiff to invoke the protection of the Constitution of the United States is in the suggestion, in the assignment of errors, "that said finding deprived said complainant of his property without due process of law. * * *" An assignment of errors can not be availed of to import questions into a cause which the record does not show were raised in the court below and rulings asked thereon, so as to give jurisdiction to this court under the fifth section of the act of March 3, 1891. (Pp. 79 and 80 of the report.)

(*b*) *Filhiol* v. *Maurice*, *185 U. S.*, *108*, *110*, is exactly in point. Here the jurisdiction of the circuit court was invoked "on the ground that the

case arose 'under the Constitution or laws of the United States, * * *'" (p. 110 of the Report); and on that ground this court held that "the writ of error was properly taken directly to this court" (p. 110 of the Report), although the review disclosed the fact that the case *did not arise* under the Constitution or a treaty of the United States. But the feature of this case which I wish most to emphasize is that the record simply showed that "the circuit court decided that the complaint failed to set up a cause of action." "*The particular grounds of the decision of the circuit court on the merits do not appear*, nor is it material, as that court manifestly had no jurisdiction." (P. 111 of the Report.) That is, it did not appear that the circuit court *determined* any constitutional issue; yet this court took cognizance of the direct appeal, not on the ground that the jurisdiction of the circuit court had been disputed, because it had not been, nor had the statutory conditions precedent to an appeal on that ground been complied with; but it heard the appeal, according to its own statement, "on the ground that the case arose 'under the Constitution or laws of the United States'" (p. 110 of the Report), although it did not appear that the circuit court *decided* the constitutional question. (P. 111 of the Report.) And if this court ruled thus when the jurisdictional question was, Is this a case "*arising* under the Constitution or laws of the United States?" a fortiori, it must have so ruled if the jurisdictional question had been, Is

this a case that "*involves* the construction or application of the Constitution of the United States?" (Infra, pp. 42–44.)

(*c*) *Penn Mutual Life Insurance Company* v. *Austin, 168 U. S., 685, 695.*—Mr. Justice White, in delivering the opinion of the court, stated and discussed the grounds on which it was contended, in that case, that a direct appeal did not lie:

> The argument by which it is sought to support the contention that a right to review the case by direct appeal does not exist not only disregards the letter of the statute, but is unsound in reason. It says that the right to the direct appeal can alone rest on the proposition "That the constitution or a law of the State of Texas conflicts with appellant's contract and contravenes the Federal Constitution; in other words, it must affirmatively appear upon the face of complainant's bill that there was involved in this case a Federal question, *the determination of which* was essential to a correct decision of the case." But the words of the statute, which empower this court to review directly the action of the circuit court, are that such power shall exist wherever it is *claimed* on the record that a law of a State is in contravention of the Federal Constitution. Of course the claim must be real and colorable, not fictitious and fraudulent.

(*d*) *Holder* v. *Aultman, 169 U. S., 81, 88.*—Although, in this case, it did appear that the circuit court actually decided the constitutional

question, yet this court apparently did not regard that as a jurisdictional fact, for it said:

> Upon such a writ of error, differing in those respects from a writ of error to the highest court of a State, *the jurisdiction of this court does not depend upon the question whether the right claimed under the Constitution of the United States has been upheld or denied in the court below;* and the jurisdiction of this court is not limited to the constitutional question, but includes the whole case.

And, as a matter of fact, this court did not decide the constitutional question, but disposed of the case on another ground.

(*e*) *Loeb* v. *Columbia Township Trustees*, *179 U. S.*, *472*, *479*.—In this case, after discussing the jurisdictional tests in certain other classes of appeals, Mr. Justice Harlan, who delivered the opin ion of the court, continued:

> But no such test of the jurisdiction of this court to review the final judgment of the circuit court is prescribed by the fifth section. Our jurisdiction depends *only* on the inquiry whether that judgment was in a case in which it was *claimed* that a State law was repugnant to the Constitution of the United States.

(*f*) In Desty's Federal Procedure it is said, discussing the right of direct appeal under section 5 of the act of 1891:

> The constitutional question need not have

been upheld or denied in the court in order to give the Supreme Court jurisdiction. (Vol. I, p. 651.)

In support of the position that a case does not "*involve* the construction or application of the Constitution of the United States," so as to give a direct appeal to this court, unless the constitutional question was actually *decided* by the circuit court, counsel for appellees refer to the following cases:

Ansbro v. *United States*, 159 U. S., 695.
Cornell v. *Green*, 163 U. S., 75.
Muse v. *Arlington Hotel Co.*, 168 U. S., 430.
Sampasas v. *Bell*, 180 U. S., 276.
Carey v. *Houston, etc., Ry. Co.*, 150 U. S., 170.
Carter v. *Roberts*, 177 U. S., 496.
Western Union Tel. Co. v. *Ann Arbor R. R.*, 178 U. S., 239.
Defiance Water Co. v. *Defiance*, decided Nov. 30, 1903.
Arbuckle et al. v. *Blackburn*, decided Dec. 7, 1903.

It is believed, however, that an examination of these cases will prove that several of them involved the construction of provisions of law materially different from section 5 of the act of 1891, and that in those which came under that section the appeals or writs of error, when dismissed for want of jurisdiction, were dismissed, not because the constitutional question was not *decided* by the lower court, but either because it was not a

real and substantial question, or was not a controlling question, or was not logically and definitely stated, or was not raised until the assignment of errors. The judgments in some of these cases, moreover, distinctly uphold the Government's position, as will be pointed out.

(*a*) *Ansbro* v. *United States*.—In this case the writ of error was dismissed because this court could not "find that any constitutional question was raised at the trial. * * * The first time that anything appears upon that subject is in the assignment of errors." (P. 697 of the Report.) And the court added:

> An assignment of errors can not be availed of to import questions into a cause which the record does not show were raised in the court below and rulings *asked* thereon so as to give jurisdiction to this court under the fifth section of the act of March 3, 1891.

Mark the language: "Rulings *asked;*" not "rulings *asked and made*."

(*b*) *Cornell* v. *Green*.—This case has already been fully considered, supra, p. 33.

(*c*) *Muse* v. *Arlington Hotel Co*.—The writ of error here was dismissed because the jurisdiction of the circuit court was invoked on the ground of diverse citizenship, and therefore, under the act of March 3, 1891, the case should have been taken to the circuit court of appeals, the judgment of which would have been final. No substantial constitutional question was presented. An attempt

was made to make it appear that the case involved the constitutionality of an act of Congress known as the Hot Springs act of June 11, 1870. But this court did not take that view:

> * * * The constitutionality of the act, if held to apply to the claim, rather than to the amenability of the United States to suit, was not considered; nor does it appear that the judgment of the circuit court was *invoked* upon it.

Again note the language of the court: was neither considered *nor invoked;* clearly indicating that in either of those events the direct appeal would have lain.

(*d*) *Lampasas* v. *Bell.*—In this case the writ of error was dismissed because the party who raised the constitutional question was not legally interested in it. Said the court:

> It follows necessarily that the plaintiff in error has no legal interest in the constitutional question which it raised and upon which it claims the right to come directly to this court from the circuit court under section 5 of the act of 1891, supra. To permit it to come here directly from the circuit court would make a precedent which would lead to the destruction of the statute. We repeat, the questions which can be raised under any of the subdivisions of section 5 of the act must be real, the controversies they present must be substantial, not only from the nature of the principles invoked,

but from the relation of the party to them by whom they are invoked.

(*e*) *Carey* v. *Houston, etc., Railway*.—The appeal in this case was dismissed because the construction or application of the Constitution of the United States was not "involved as controlling," and the sense in which the court used that expression is disclosed by the passage which immediately follows it:

> The bill before us refers to no provision of the Constitution upon which complainants relied to invoke the action of the court in vindication of their supposed rights, or which was presented to be construed or applied by the court. *No question upon such construction or application was raised* between the parties upon the record, *or determined* by the decree of the circuit court.

Again, consider the language of the court: Raised *or* determined; not raised *and* determined.

(*f*) *Carter* v. *Roberts*.—It will be found that this case contains nothing pertinent to the question in hand.

(*g*) *Western Union Tel. Co.* v. *Ann Arbor Railroad*, *Defiance Water Company* v. *Defiance*, *and Arbuckle et al.* v. *Blackburn*.—In neither of these cases was it decided that the circuit court must have actually passed upon the constitutional question involved in order to give the right of direct appeal. The point decided in the first two cases was that the constitutional question attempted

to be raised was not real or substantial, but fictitious, and that therefore the respective circuit courts erred in taking original jurisdiction. The following language from the opinion in *Defiance Water Co.* v. *Defiance* sufficiently indicates the ground on which this court based its action in these cases:

> We regard this bill as an attempt to evade the discrimination between suits between citizens of the same State and suits between citizens of different States, established by the Constitution and laws of the United States, by bringing into the circuit court controversies between citizens of the same State, an evasion which it has been the constant effort of Congress and of this court to prevent (*Bernards Township* v. *Stebbins*, 109 U. S. 341, 353; *Shreveport* v. *Cole*, 129 U. S. 36, 44), and are of opinion that it should have been dismissed for want of jurisdiction.

In the case of *Arbuckle et al.* v. *Blackburn* the appeal, which was from the decree of a circuit court of appeals, was dismissed "because the jurisdiction of the circuit court was 'dependent entirely upon the opposite parties to the suit or controversy being citizens of different States,' and the decree of the circuit court of appeals was final."

But in any event the judgments in those cases could not control the case at bar, because in each of them the question was, Is this a case "*arising under* the Constitution or laws of the United States" within the meaning of the act of August

13, 1888? While here the question is, Is this a case that "involves the construction or application of the Constitution of the United States" within the meaning of section 5 of the act of March 3, 1891? There is, of course, a distinction with a very important difference between these two questions, and it is from the failure to note this distinction, I apprehend, that the contention proceeds that no direct appeal lies in this case because the constitutional issue raised was not *decided* by the circuit court.

It needs no argument to prove that "involving" is a much larger term than "arising under." Cases may *involve* the construction of the Constitution, and yet not *arise under* it. To *arise under* the Constitution, within the meaning of the act of August 13, 1888, the case must, of course, rest on some provision thereof, and it may well be held, also, in order to prevent the undue extension of the jurisdiction of the Federal courts at the expense of that of the State courts, that before a case can be said to have *arisen* under the Constitution it must have been *decided* on the constitutional ground. Moreover, it has been held "that where the plaintiff invokes the jurisdiction of the circuit court solely upon the ground of diverse citizenship, and * * * the claim of the invalidity of a State statute under the Constitution of the United States *came from the defendant* * * * then the judgment of the circuit court of appeals is final within

the meaning of the sixth section of the act of 1891" (*Loeb* v. *Columbia Township Trustees*, 179 U. S., 479, and cases there cited), and no appeal can be taken to this court on the constitutional ground.

But a case "involves" the construction of the Constitution under section 5 of the act of 1891, regardless of who raised the constitutional question; nor is there here any delicate consideration of a possible encroachment on the jurisdiction of the State courts to guard against. Furthermore, if Congress had not intended in the enactment of March 3, 1891, that the expression "*involving* the construction or application of the Constitution of the United States" should cover a wider field than the expression "*arising under* the Constitution of the United States," it is reasonable to suppose that it would have employed the latter phraseology, which it had used in previous enactments and with the interpretation of which it was familiar.

ARGUMENT ON THE MERITS OF THE APPEAL.

I.

The first point to be noticed is the suggestion, which, however, does not seem to have been pressed (although remarked upon by the circuit court), that the Interstate Commerce Commission had no jurisdiction to hear the complaint because the complainant is not himself a shipper of coal. But that suggestion can hardly stand in the face of the broad, plain, and express language of the act to

regulate commerce, which provides "that *any person*, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts." It is hardly worth while to point out here how uniformly the courts have overridden attempts to qualify, change, or limit, by construction, the meaning of perfectly clear and unambiguous words in a statute, as that subject was gone into in the argument on the motion to dismiss the appeal (*supra*, p. 21–23.) Congress has said that any person may file a complaint of this character, and in the absence of unmistakable evidence to the contrary, it must be presumed to have meant *any person*, not *some persons*. Again—and if the answer to the objection that the complainant is not a shipper is not already conclusive this would seem to make it so—the section provides that "No complaint shall at any time be dismissed because of the absence of direct damage to the complainant." Finally, the Commission was making a general investigation into the conduct and management of the business of the defendant carriers pursuant to section 12 of the act to regulate commerce (Petition, rec., pp. 14, 20, 29, 37), and the complaint

of Hearst was simply the *occasion* of the investigation. If the Commission would have had a right to this evidence if it had been making a general investigation exclusively, it would seem to be quibbling to say that it has no right to it because the general investigation included the investigation of a particular complaint.

II.

The test of relevancy to be applied in a proceeding before an administrative body like the Interstate Commerce Commission is not that strict test which is applied in trials at common law. In proceedings of the latter sort, the body which passes upon disputed questions of fact is, as a rule, untrained in legal reasoning and inexperienced in deciding issues of more or less complexity, and it is necessary, on that account, in order to prevent confusion and prejudice in the minds of the jurors, to exclude everything which is not of clear probative value. Of course, none of these considerations applies to the Interstate Commerce Commission, which is an administrative body of trained and experienced men, appointed to investigate and report to Congress upon the conditions of interstate transportation, and to hear complaints of abuses therein; and unless it is to be greatly hampered in its work and its usefulness to that extent impaired, it must be allowed very considerable latitude in determining what evidence is, and what is not, of sufficient probative force to be received,

provided, of course, that no constitutional right is infringed. This view was affirmed by one of the learned counsel for the respondents below, when he said, addressing the Commission:

> I appreciate that your honors are not bound by all of the strict rules of evidence, but I understand that the ordinary basic principles are followed. (Rec., p. 405.)

But it is not only supported by general reasoning; the very terms of the acts to regulate commerce clearly show that Congress did not intend that the Commission should be hindered and tied down in its investigations by the application of the strict common-law rules concerning relevancy. Thus section 12 of the act to regulate commerce provides that "the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers *full and complete information* necessary to enable the Commission to perform the duties and carry out the objects for which it was created; * * * and shall have power to require by subpœna the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents *relating to any matter under investigation*. And section 3 of the act of February 19, 1903—the Elkins act—goes still further, and

provides that "in proceedings under this act, and the acts to regulate commerce, the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects *relating directly or indirectly to the matter in controversy*, and to compel the production of all books and papers, both of the carrier and the shipper, which *relate directly or indirectly to such transaction.*"

Now, of course, *relating to* is a broader term than *relevant to*. Facts and circumstances may *relate to* a subject and yet not be *relevant* in the somewhat strict sense in which that term is used in works on the law of evidence.

This court, also, has recognized the broad range which the examinations of the Interstate Commerce Commission must necessarily take if it is to fulfill the purposes of its creation. In *Brimson's case* (154 U. S., 473), Mr. Justice Harlan, speaking for the court, said that it is not disputed that Congress has the power to authorize "the Commission to inquire into the management of the business of carriers subject to the provisions of the act, and *to investigate the whole subject of interstate commerce as conducted by such carriers*, and in that way to obtain *full and accurate information of all matters involved* in the enforcement of the act of Congress," and continued:

> It was clearly competent for Congress, to that end, to invest the Commission with

> authority to require the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents *relating to* any matter legally committed to that body for investigation.

And, again, in the same case, at page 474, the court said:

> An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce and with power to call witnesses before it, and to require the production of books, documents, and papers *relating to* that subject, would go far toward defeating the object for which the people of the United States placed commerce among the States under national control. All must recognize the fact that the *full information necessary as a basis of intelligent legislation by Congress* from time to time upon the subject of interstate commerce can not be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced, otherwise than through the instrumentality of an administrative body representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules.

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And in *Interstate Commerce Commission* v. *Cincinnati, New Orleans, etc., Railway Co.* (167 U. S., 479, 506) this court again spoke to the same effect:

> But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which the same is conducted, and has the right to compel *complete and full information* as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the interstate-commerce act, shall be secured to all shippers. It must also see that that publicity which is required by section 6 is observed by the railroad companies. Holding the railroad companies to strict compliance with all these statutory provisions

> and enforcing obedience to all these provisions tends, as observed by Commissioner Cooley in *In re Chicago, St. Paul and Kansas City Railway* (2 Int. Com. Com. Rep., 231, 261), to both reasonableness and equality of rate as contemplated by the interstate-commerce act.

See also *Texas and Pac. Ry.* v. *Interstate Commerce Commission* (162 U. S., 212, 233).

Judged by the foregoing standards, it is submitted that the three groups of evidence described in the statement of the case, *supra*, are relevant and germane to the inquiries which the Interstate Commerce Commission was prosecuting and which it was authorized to prosecute; that is, they *relate to* the business and management of interstate carriers and the conditions of interstate transportation. I will now take up separately these three groups of evidence and point out briefly the specific grounds on which each is claimed to be relevant to, or to relate to, the subjects which the Commission was investigating.

III.

(1) The first group consists of the so-called purchase contracts between the railroads, or the coal companies controlled by them, and the individual operators described in the statement of the case, *supra*, pages 7–12. These contracts are relevant for a number of purposes.

(*a*) It is not disputed that the Commission is entitled to all facts relating to the transportation

of coal from the coal fields to the tide-water markets; and the production and sale of anthracite coal and its transportation have, through the action of the carriers themselves, become so closely interlaced and bound up together that it is impossible to make an intelligent study or investigation of the conditions of transportation between the coal regions and the seaboard without also inquiring into the relationship between the carriers, or their agencies and instrumentalities, and the production and sale of coal. Therefore, even if these contracts do relate to the sale of coal and not to its transportation, the carriers can not be heard to protest against their production on that ground, because they themselves have caused the two subjects to become so blended and interwoven that one can not be understood without investigating both. The principle on which this argument is based runs through the whole body of the law. It is the principle on which this court decided that a State could prohibit the manufacture of all oleomargarine, the good as well as the bad, because it baffled ordinary inspection to distinguish the good from the bad. (*Powell* v. *Pennsylvania*, 127 U. S., 678, 685.)

(*b*) But these contracts are not, in reality, contracts for the sale of coal, although on their face they purport to be, but contracts for the transportation of coal. What is actually done under them? How do they operate? How have they been regarded by shippers, and, indeed, by the

railroads themselves, as contracts of transportation or as contracts of sale? A consideration of these questions will disclose the true character of the contracts. The petition of the Commission (Rec., pp. 15–17) recites, for the convenience of the court, some of their essential provisions. It will be seen that what actually results from the operation of one of these contracts is this: The railroad company directly, or through its alter ego, the coal company, takes the coal of the independent operator off of his hands at the breakers, transports it to the tide water markets, and sells it, giving the operator 65 per cent of the average selling price for the month, and retaining 35 per cent. Now this 35 per cent, less the cost of selling, which is, as before stated, 10 to 20 cents a ton, clearly represents, in the final analysis, what the railroad company receives for the transportation service. The intervention of the artificial agency—a coal company owned or controlled by the railroad company—does not affect the essential character of the transaction, but only the details of bookkeeping; and in the case of the Delaware, Lackawanna and Western there is no such agency—no coal company. The contracts are, therefore, relevant on the general ground that they relate to transportation. But the record shows in several places (p. 392, for example) that the average selling price of coal per ton at tide water, during the life of these contracts, has been such that 35 per cent thereof, minus the cost of selling, was considerably less

than the published tariff of the railroads. For example, between April of 1902 and April of 1903 the market price of anthracite coal ranged from $4 to $4.50 a ton, f. o. b., New York Harbor (Rec., p. 392). Now, under the contracts in question, the railroads would get 35 per cent of this price, less the cost of selling, which would be, taking the figures most favorable to the railroads, that is, the highest market price and the lowest cost of selling, $1.47½—about 8 cents a ton less than the lowest and 28 cents a ton less than the highest published tariff rate from the coal fields to the seaboard. These contracts are relevant, therefore, to show a departure from the published transportation rates in favor of the shippers who entered into them with the railroad companies, and also as tending to show that the amounts the railroads actually received under them were reasonable charges for the transportation service rendered and that the published rates are too high.

That these so-called purchase contracts are regarded as transportation contracts by the railroads as well as by shippers is evidenced by the fact that for a long period prior to November, 1900, the transportation rates were adjusted on a basis equal to the difference between the price paid for coal at the breakers by the railroad company, or its coal company, and the price it received for the coal at tide water. Thus Henry E. Meeker, a witness on behalf of the complainant in the pro-

ceeding before the Interstate Commerce Commission, testified as follows (Rec., p. 513):

Mr. SHEARN. When coal is $4 at tide water you lose money on all you purchase, don't you?

Mr. MEEKER. Not on all; no.

Mr. SHEARN. On prepared sizes?

Mr. MEEKER. No.

Commissioner PROUTY. It depends on the road?

Mr. MEEKER. It depends on the road.

Mr. SHEARN. If it comes in on the Lehigh Valley?

Mr. MEEKER. I do if I have to pay $1.55.

Mr. SHEARN. Do you pay $1.55?

Mr. MEEKER. I do under protest.

Commissioner PROUTY. How long since you have?

Mr. MEEKER. I have protested since November, 1900.

Commissioner PROUTY. How long since you have paid $1.55?

Mr. MEEKER. Since November, 1900.

Commissioner PROUTY. What did you use to pay before that?

Mr. MEEKER. Prior to that $1.55 the rates were adjusted at the end of the month on a basis equal to the difference between the cost of the coal to the Lehigh Valley Coal Company at the breaker and the price that the Lehigh Valley Coal Company received for the coal at tide water.

Mr. SHEARN. That was adjusted in the shape of a rebate for you at the end of the month?

Mr. MEEKER. To all shippers.

Mr. SHEARN. That was prior to November, 1900?

Mr. MEEKER. Prior to the previous strike to this one.

Mr. SHEARN. How long had that arrangement been in force?

Mr. MEEKER. Several years.

The only difference in effect between the arrangement thus described and the so-called purchase contracts is that under the former the charge for the transportation was based on the difference between the price paid by the railroads for coal at the breakers and the price received by them at tide water, while under the latter scheme the transportation charge is based directly on the price realized at tide water.

(2) The Temple Iron Company contracts. According to the circuit court's own conclusion these contracts were part of the machinery by which the building of a new and competing railroad from the coal fields to the seaboard was prevented. It would certainly seem, therefore, that they are germane to an inquiry into the general conditions of railroad transportation between the coal fields and tide water; and such an inquiry the Commission was making, and indubitably had the right to make. They are germane, also, on more specific grounds; that is, (*a*) they tend to show that the railroads which are parties to them have formed a pool in violation of section 5 of the act to regulate commerce, and (*b*) they bear on the question to what

extent, if any, are the rates for the transportation of anthracite coal regulated by competition, and that consideration, in turn, has a direct bearing on the question, whether or not the rates are reasonable, as the counsel for the Delaware, Lackawanna and Western Railroad Company frankly admitted in the following colloquy with the chairman of the Commission (Rec., p. 365):

> The CHAIRMAN. I understood you to say substantially that the question as to whether a given rate is established and maintained by the carriers under conditions of competition or otherwise is competent to be shown as bearing on the reasonableness of that rate.
>
> Mr. Ross. Yes, sir.

(3) The questions propounded to Mr. E. B. Thomas and Mr. William H. Truesdale (statement of the case, *supra*). The circuit court declined to compel the witnesses to answer these questions, on the ground that "they relate wholly to the sale of coal, and not to its transportation." But in investigating the business of interstate transportation it is certainly competent for the Commission to inquire into the relation which the railroads sustain to the commodities which form the bulk of their tonnage; otherwise the investigation must be very imperfect, and its results unreliable and misleading. While, therefore, it is very true that the Interstate Commerce Commission can not inquire into the general subject of the production and sale of coal, it can and should, as a branch of

its power and duty to inquire into the manner and method of the management of the business of interstate railroads (sec. 12 of act to regulate commerce), investigate the relation that these railroads bear to the production and sale of coal, even though that relation be not in violation of the acts to regulate commerce. And the questions propounded to Mr. Thomas and Mr. Truesdale were intended to bring out this relation, and are clearly relevant for that purpose.

IV.

It is further contended that to compel the witnesses to produce the contracts in controversy and answer the questions propounded would be to (*a*) subject private papers to unreasonable searches and seizures in violation to the fourth amendment to the Federal Constitution; (*b*) make the witnesses furnish evidence that would subject them to a penal forfeiture, and (*c*) make them furnish evidence concerning a subject wholly within the jurisdiction of State power, and therefore beyond the cognizance of a body created by Congress.

It is not believed that the record discloses any real or substantial issue between Federal and State powers. Unless the evidence in controversy relates to the business or methods of *interstate* carriers and the conditions and circumstances of *interstate* transportation, it is conceded that it is not admissible. The objection that the production of the evidence would subject the witnesses who

are asked to produce it to a penal forfeiture is completely met by the act of February 11, 1893, extending to persons who testify in proceeding under the acts to regulate commerce absolute immunity from penalties or forfeitures on account of any evidence they may have given, and by the decision of this court in *Brown* v. *Walker* (161 U. S., 608) construing that act.

In answer to the contention that to compel the production of the contracts in issue would subject private papers to unreasonable searches and seizures, it is sufficient to say that it is elementary that a court, or an administrative body duly charged with the making of investigations, is entitled to consider as evidence the private papers of third parties as well as those of parties before it, and that in order to exclude such papers on the ground advanced, their relevancy having been established, it must be very clearly shown wherein their production would constitute an unreasonable search or seizure. And that has not been shown in this case. On the contrary, one of the third parties, for whose right to be secure from unreasonable search counsel for the railroads exhibited so much solicitude, flatly stated on the witness stand that he had one of the so-called purchase contracts, and personally did not object to producing it, and refused to do so simply because counsel for the railroads objected. (Rec., p. 456.) Neither is it thought that this court will be much impressed with the contention that to compel the production

of the Temple Iron Company contracts would constitute an unreasonable search or seizure of anyone's private papers, in the light of the fact that they are all printed in the record as exhibits to the answer of one of the appellees to the petition in this case, and in the additional light afforded by the following passage between the chairman of the Commission and counsel:

> The CHAIRMAN. Those papers must have all been made public at that time or the stock would not have been sold.
>
> Mr. CAMPBELL. *Yes; they were.* This is a question of principle we are discussing. There would not be the slightest objection to your honors seeing every word of them all at any time, but officially we do not desire you to regard them. (Rec., p. 351.)

This language makes it perfectly clear that the real ground of objection was that the contracts were irrelevant; not that their production would violate the privacy of anyone's papers or subject them to unreasonable search.

V.

The decree of the circuit court should be reversed, with directions to enter a decree granting the petition of the Interstate Commerce Commission.

W. A. DAY,
Assistant to the Attorney-General.

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Clerk.

In the Supreme Court of the United States

OCTOBER TERM, 1903.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
v.
DAVID G. BAIRD ET AL., APPELLEES.

No. 409

BRIEF FOR APPELLANT ON MOTION TO DISMISS THE APPEAL AND ON THE MERITS.

J. G. CARLISLE,
Special Attorney for the Interstate Commerce Commission.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
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DAVID G. BAIRD ET AL., APPELLEES. } No. 409.

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ON THE MOTION TO DISMISS.

The question whether an appeal can be prosecuted from the order or decree of the circuit court direct to this court under the fifth section of the circuit court of appeals act is so fully discussed in the brief filed by the Assistant to the Attorney-General that it is unnecessary to present further argument or citation of authorities upon that subject. If the order or decree of the court below had been adverse to the appellees and they had been required to produce the books and papers and give the testimony called for, it seems quite clear that they could have brought an appeal direct to this court on the

ground that the case involved "the construction and application of the Constitution of the United States;" and if this is so, it is difficult to understand why the other party may not pursue the same course.

Whether the case does or does not involve "the construction or application of the Constitution" does not depend upon the question whether the court decided in favor of one party or in favor of the other. If the constitutional question is presented in the case by proper pleadings, or in any other proper form, the fifth section of the act referred to must apply whether the court below decided that question or not. The latter case is here now in this court just as it was presented in the circuit court, and the constitutional question is therefore as much involved here as it was there.

We insist that it was the intention of Congress in adopting the act of February 19, 1903, to provide that all cases prosecuted in the name of the Interstate Commerce Commission under the direction of the Attorney-General where the trial is to be had before the judges without a jury might be expedited in the court of original jurisdiction and brought directly to this court on appeal.

Suits by the Interstate Commerce Commission, whether they are at law or in equity, are not prosecuted in the name of the United States, and therefore, while the act of February 11, 1903, specifically referred to suits brought to enforce the act,

yet it could have no practical application to them; and in order to remedy this defect the act of February 19, 1903, was passed.

The provision in the latter act, upon which we rely, is as follows:

> That the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

It will be observed that suits in equity are not mentioned in the act except for the purpose of referring to and identifying the prior statute. The enactive and effective part of the statute, so far as it relates to this question, is that the provisions of the prior act "shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission." If it had been the intention of Congress to change only that part of the prior statute which confined its operation to those cases which were prosecuted

in the name of the United States, the words "to any case" were not only unnecessary, but inappropriate. If the statute had declared that the provisions of the former act should apply to "suits in equity prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission," the intention of Congress to adhere to the limitation as to the character of the suits prescribed by the former act would have been clearly expressed.

Why should the phraseology be changed if there was no purpose to extend the scope and effect of the statute? Unless there is something in the act to show clearly that a different meaning was intended to be given to the words "any case" they must be held to be equivalent to "all cases;" and inasmuch as the policy of the legislature was to facilitate the enforcement of two important laws directly affecting the public interests, this construction of the words seems to be unavoidable.

According to the construction contended for by the appellees, no action brought by the Interstate Commerce Commission for the enforcement of the provisions of the act to regulate commerce could be expedited unless it is a suit in equity, which, if correct, might exclude a great number of the most important proceedings instituted by the Commission for the purpose of enabling it to discharge its duties under the provisions of the statute.

The necessity for expedition in such a case as the present is greater than in almost any other that could be instituted under the law. The Commission, while engaged in the discharge of the duties imposed upon it, has been confronted by contumacious witnesses, who have refused to answer questions or to produce books and papers which, in the opinion of the Commission, are relevant to the questions pending before it and necessary to enable it to reach a correct conclusion. Having no power itself to compel the witnesses to testify or to produce books or papers, it must either go on without the information it deems necessary or it must suspend its proceedings for an indefinite length of time, until its application to the court can be heard in the regular course.

All civil suits brought in the name of the United States to enforce the act to protect trade and commerce are suits in equity, and therefore the act of February 11, 1903, made ample provision for expediting the trial of such suits and for direct appeal to this court; and it was evidently the intention of Congress to make the same provision for suits brought to enforce the Act to regulate commerce, except in those cases where a trial by jury is provided for by the statute. But, as before stated, the act, notwithstanding the evident intention of Congress, did not by its terms actually embrace the latter class of suits, because they are not prosecuted in

the name of the United States; and, moreover, there was room to doubt whether any action authorized by the Act to regulate commerce was a "suit in equity" in the sense in which those words are ordinarily used.

A suit in equity in the strict sense is an action to enforce equitable rights and afford equitable remedies, and is conducted in accordance with well-known and long-established forms. It might well be doubted, therefore, whether the summary proceedings authorized for the enforcement of the commerce act, although conducted on the equity side of the court, were such suits in equity as would be embraced by the terms of the act of February 11, 1903; and hence the subsequent statute was enacted in order to make it entirely clear that those suits were also to be expedited in the court of original jurisdiction and heard on direct appeal to this court.

In the twelfth section of the Act to regulate commerce, as amended March 2, 1889, and February 10, 1891, it is provided:

> That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission

to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books,

papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

It will be observed that the act does not state whether the application for the order requiring the witnesses to testify or produce books and papers shall be by motion or petition or by a bill or affidavit. It is clear, however, that it is a proceeding in which the court is to make an "order" or decree, and that a disobedience of this order or decree of the court may be punished as a contempt in the same manner as a refusal to obey any other order or decree of a court of equity. There is no judgment for money or property, but a mere adjudication that the respondent is subject to a certain obligation or duty and an order directing him to perform it. It is not a proceeding for contempt, for no contempt has been committed until after the order or decree of the court has been made, and then the contempt consists in a refusal to obey the

order or decree of the court, and not in a refusal to obey the order or requirement originally made by the Commission.

It is a proceeding of the same nature as that provided for in the sixteenth section of the Act to regulate commerce and in the third section of the amending act of February 19, 1903. In the sixteenth section as amended March 2, 1889, it is provided that whenever any common carrier shall violate or refuse or neglect to obey or perform any lawful order or requirement of the Commission it shall be lawful for the Commission or any company or person interested in the order or requirement—

> to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings ap

> plicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.

The third section of the act of February 19, 1903, provides for substantially the same method of proceeding in the cases authorized to be brought by the Commission under that act. Whether these proceedings to enforce the provisions of the act are or are not "suits in equity" in the ordinary sense of the word, it is unnecessary to inquire, for it is clear that Congress has so considered and treated them in its legislation upon the subject; and this being so, it is equally clear that even if the construction of the act of February 19, 1903, contended for by the appellee, is correct, it embraces proceedings or cases of the class to which this one belongs. If the words "shall apply to *any case* prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission" are to be construed to embrace suits in equity only, still they must be held to include all cases of the kind which Congress itself has declared to be suits in equity or to be prosecuted on the equity side of the court. Any other construction would defeat the purpose of the law and leave the Interstate Commerce Commission

subject to all the obstructions and delays which have made the passage of the act necessary.

There being no other form or manner of proceeding provided in the statutes for the enforcement of this order made by the Commissioners to give testimony or to produce books and papers, the courts approve and adopt in such cases the same procedure required by the sixteenth section of the act above quoted, and they have treated all the cases as belonging to the same class; that is, suits in equity, except those in which a trial by jury is required, and they are separately provided for in the law.

In the case of *Interstate Commerce Commission* v. *Brimson* (154 U. S., 447), the case was summarily commenced in the circuit court by the filing of a petition, and the pleadings were of the same informal character prescribed by the sixteenth section of the original act and by the third section of the act of February 19, 1903; and no different course has been pursued in any such case so far as I know.

ON THE MERITS.

1. THE COAL-PURCHASE CONTRACTS.

The charges made against the railroad companies in the petition filed before the Interstate Commerce Commission, as stated in the opinion of the court below, were as follows:

> (1) That the freight rates charged by them for the transportation of anthracite coal are unreasonable and unjust.

(2) That said rates are relatively unreasonable and unjust as compared with the rates charged for transportation of bituminous coal, and with the rates for other carload freight generally.

(3) That defendants have combined to pool and divide among themselves freights and freight traffic of anthracite coal; and

(4) That they have discriminated against private operators of coal mines by charging them a higher rate of freight than charged other private operators or coal companies owned by said defendants; all in violation of the interstate commerce act. (Page 832, Rec.)

It was not contended by any of the respondents that these matters were not within the jurisdiction of the Commission. Concerning the relation existing between the railroad companies and the several coal companies in whose names the contracts in controversy were made, the evidence taken before the Commission shows the following facts which, I believe, are not disputed:

The only means of transportation between the anthracite coal fields in Pennsylvania and tide water are those provided by the respondent carriers—the Pennsylvania Railroad Company, Philadelphia and Reading Railway Company, Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, New York, Susquehanna and Western Rail-

road Company, and the New York, Ontario and Western Railroad Company.

All the capital stock of the Philadelphia and Reading Railway Company is owned by the Reading Company. The Reading Company also owns all the stock of the Philadelphia and Reading Coal and Iron Company, whose business is mining and selling anthracite coal. The witness, George F. Baer, is president of these three companies. The coal and iron company owes the Reading Company $79,000,000, on which only 1½ per cent interest is charged. The earnings of the coal and iron company are appropriated by the Reading Company in such manner as that company deems advisable. The Philadelphia and Reading Railway Company and the coal and iron company are controlled directly by the stockholders of the Reading Company, the capital stock of which is held by three voting trustees.

The Reading Company owns a majority of the stock of the Central Railroad Company of New Jersey, having acquired it about January, 1901. The Central Railroad Company of New Jersey owns nine-tenths of the capital stock of the Lehigh and Wilkesbarre Coal Company, whose business is mining and selling anthracite coal. The witness, George F. Baer, is president of the Central Railroad Company of New Jersey and of the Lehigh and Wilkesbarre Coal Company, thus being the president of five different companies. By virtue

of its ownership of the stock of the Philadelphia and Reading Coal and Iron Company and of the Central Railroad Company of New Jersey, it is estimated that the Reading Company controls about 63 per cent of all the unmined anthracite coal in Pennsylvania.

The Lehigh Valley Railroad Company owns all the stock of the Lehigh Valley Coal Company which is engaged in mining and selling anthracite coal. It is estimated that the Lehigh Valley Coal Company owns 17 per cent of the area of unmined anthracite coal in Pennsylvania. The Reading Company and Lehigh Valley Railroad Company thus own or control about 80 per cent of the unmined anthracite coal in that State. The witness, Eben B. Thomas, is president of the Lehigh Valley Railroad Company and of the Lehigh Valley Coal Company, and he is also a director of the Erie Railroad Company. Prior to December, 1902, he was chairman of the board of directors of the Erie Railroad Company and an official of the Hillside Coal and Iron Company and of the Pennsylvania Coal Company. The Erie Railroad Company owns a controlling interest in the Hillside Coal and Iron Company, and owns all the stock of the Pennsylvania Coal Company, whose business is mining and selling anthracite coal. Its stock is also held by three voting trustees.

The Erie Railroad Company owns a majority of the capital stock of the New York, Susquehanna

and Western Railroad Company, and the latter company owns the stock of the New York, Susquehanna and Western Coal Company, whose business is mining and selling anthracite coal.

Section 5, article 17, of the constitution of Pennsylvania prohibits common carriers from directly or indirectly prosecuting or engaging in mining for transportation, but the charter of the Delaware, Lackawanna and Western Railroad Company antedates this constitutional provision, and it therefore owns and operates anthracite coal mines directly, and not by means of a subsidiary company.

The Commission alleged in its petition to the circuit court that all the so-called purchasing contracts made in the names of the coal companies owned and controlled by the railroad companies are substantially alike, and this allegation is not denied by any witness or by the answers in the case. These contracts were the result of repeated conferences between a committee representing the private mine owners and some of the presidents and other officials of the railroad companies, who were also at the same time officials of the coal companies owned or controlled by the railroad companies. (Baer, Record, 545 et seq.)

One of the contracts was exhibited to the Commission, but not produced in evidence, and it is copied in the record on pages 15 to 17. By its terms the seller agrees to deliver on the cars f. o. b.

at the breakers "all the anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate, etc.," but the shipments are to be "made from time to time as called for by the buyer." The seller is to receive for all sizes above pea coal, 65 per cent of the general average free-on-board prices of such sizes received at tidewater points at or near New York between Perth Amboy and Edgewater, and it is stipulated that the free-on-board price means the price received without any deductions for commissions, demurrages, or other charges, thus requiring the railroad companies or their coal companies to pay all costs of selling out of the 35 per cent. According to the testimony a large part—about 20 per cent—of the coal obtained under these contracts was transported from the mines in Pennsylvania to tidewater at or near New York, and thus became interstate traffic and shou'd, therefore, have been subject to the published rates for transportation that were charged on other coal shipped from and to the same points.

The motives for entering into these contracts are apparent. In the first place they enabled the railroads and their coal companies to control the output of the mines and prevent competition with the products of their mines in the markets; and in the second place they enabled the railroad companies, as common carriers, to secure free from competition the transportation of all coal thus procured by their coal companies from private oper-

ators. Since the contracts were made there has been in fact no real competition between the railroad companies for the coal traffic and no competition between the coal companies themselves in the sales made at tide-water points. The price of anthracite coal at New York harbor points for the same grade at the same time has been identical in all the monthly price circulars issued by the companies. Mr. Baer fixes the prices of the coal sold by the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkesbarre Coal Company, and Mr. Truesdale fixes the prices for the Delaware, Lackawanna and Western coal. Mr. Thomas refused to state who fixes the prices for the Lehigh Valley Coal Company and the Hillside Coal and Iron Company. As already stated Baer is president of two of the most important railroad companies, and Thomas is president of the Lehigh Valley Railroad Company. Truesdale is the president of the Delaware, Lackawanna and Western Railroad Company.

The Commission by due process and orders required the production of these contracts to be used as evidence in the investigation, but the witnesses refused and the circuit court has denied the application for an order compelling them to do so. So much of the assignment of errors in this appeal as relates to this case is as follows:

> First. The court erred in dismissing the petition of the Interstate Commerce Com-

mission for an order requiring David G. Baird, secretary of the Lehigh Valley Coal Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Second. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring George O. Waterman, secretary of the Lehigh and Wilkesbarre Coal Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Third. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring W. G. Brown, secretary of the Philadelphia and Reading Coal and Iron Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Fourth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring G. A Richardson, secretary of the Hillside Coal and Iron Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that com-

pany and any producers of anthracite coal or owners or operators of anthracite mines.

Fifth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring Fred F. Chambers, secretary of the Delaware, Lackawanna and Western Railroad Company, to produce all contracts for the purchase of anthracite coal entered into since January 1, 1901, between that company and any producers of anthracite coal or owners or operators of anthracite mines.

Sixth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring E. B. Sturges to produce a contract between the Clarence Coal Company and the Hillside Coal and Iron Company for the sale to the latter company of anthracite coal and a contract between the Pine Hill Coal Company and the Philadelphia and Reading Coal and Iron Company for the sale to the latter company of anthracite coal.

In conducting the investigation called for by the petition filed before it and in the discharge of its duty under the statute "to inquire into the management of the business of all common carriers subject to the provisions of this act and to keep itself informed as to the manner and method in which the same is conducted," we respectfully submit that, under the circumstances shown to exist in this case, the Commission had a right to require the production of these contracts in order that it

might be able to ascertain from an inspection of the contracts themselves and by the examination of witnesses what rates the carriers were in fact receiving, directly or indirectly, for the interstate transportation of this coal. The contracts constitute the foundation of such an inquiry. The business and interests of the coal companies and the railroad companies are so interwoven with each other that they can not be separated in the prosecution of an inquiry into the rates actually charged and collected for carrying this particular freight.

While the coal companies owned and controlled by the railroad companies are not, as coal companies, common carriers of interstate commerce, they are all instruments or agencies by and through which the traffic is secured for their owners, who are such common carriers. The two classes of corporations are identical in interest; the stockholders constitute the body politic created by the act of incorporation, and the officials are merely their agents, or trustees, to manage its affairs; and these corporations owning the stock of the coal companies are, therefore, for all practical purposes, the real coal companies.

If the coal companies actually pay the railroad companies the published rates for the transportation of the coal acquired under the contracts in question, when 35 per cent of the average price at tide water, less costs of sale, is not sufficient for that purpose, the coal company nominally loses to

the extent of the deficiency, but in fact the railroad company, being the sole owner of the coal company, sustains the loss and the effect upon it is precisely the same as if it had collected for transportation only the 35 per cent, less the costs of sale. If, on the other hand, the coal company in such a case actually pays to the railroad company the remainder of the 35 per cent, after deducting costs of sale, the latter company does not even go through the form of charging or collecting its published rate. It is only a matter of bookkeeping, and the substance of the transaction is the same in both cases. In neither case can the railroad company actually receive the benefit of the published rate for the transportation of the coal acquired and sold under the contracts made by its subordinate corporation, and the evidence conduces strongly to show that the railroad companies did not, for a time at least, resort to the device of charging the published rate and then losing a part of it as the owner of the coal company.

The evidence shows that prior to November, 1900, the Lehigh Valley Railroad Company made an arrangement with the witness, Meeker, a coal shipper, and other shippers of anthracite coal, by which they were given the same terms as the railroad coal companies were allowed for the transportation of purchased coal; that is to say, their rates were so adjusted that these shippers paid for transportation only the difference between the cost

of coal to the Lehigh Valley Coal Company at the breakers and the average price received for it at tide water. At that time the so-called independent coal companies, from whom the railroad companies made purchases, were allowed 60 per cent of the average price at tide water, instead of 65 per cent agreed upon under the contracts which took effect in February and March, 1901. It is also shown by the evidence that in the early part of the year 1903 the so-called independent or private operators were permitted to sell their own coal in the market, the railroad coal companies going through the form of purchasing it at the breakers for $3.25 per ton and then going through the form of reselling it to the independent private operator at tide-water points for $5 per ton, thus retaining in the hands of the coal-road companies $1.75 per ton, which was the exact amount of the published rate for carrying.

These coal-purchasing contracts would therefore conduce to show:

1. That there is undue or unreasonable preference or advantage given to the independent coal companies that transfer their coal to the railroad coal companies.

2. That competition in the traffic in that coal has been suppressed, and this has a material bearing upon the question as to the reasonableness of the published rates; for if competition is not allowed to influence the rate an opportunity is thus afforded to establish unreasonable rates, and

if the railroads are in fact carrying the so-called purchased coal for 35 per cent of the tide-water price, less the cost of selling, when that percentage is less than the published rate, the inference is justifiable that the latter rate is too high for the service.

3. That the independent or private operators who refuse to sell their output to the coal-road companies are subjected to undue and unreasonable prejudice and disadvantage in respect to the rates charged for carrying their coal.

4. That the published rates charged for carrying coal not shipped through the railroad coal companies do not bear a fair and reasonable relation to the antecedent cost of the traffic as delivered for transportation—or, in other words, to the commercial value of the freight.

Speaking of one of the purchasing coal companies, the court below said:

> It appears by the record that the capital stock of the Lehigh Valley Coal Company is all owned by the Lehigh Valley Railroad Company, and it may fairly be contended that its transactions, if not those of an agent of the railroad company, were conducted solely in its interests. The contract, or at least one of the contracts, asked for, has been produced and submitted to the court, and it does not provide, as indicated in the petition, that the "prices paid to the seller are certain percentages of the prices for which the coal is sold at tide-water ter-

minals." It is entirely a contract of purchase and does not deal at all with the subject of transportation.

It is fair to infer from this that, in the opinion of the court, the mere form of the arrangement is conclusive, and that the Interstate Commerce Commission is precluded from ascertaining what its real substance is. If these contracts were, as we claim the right to show, really made by the railroad coal companies for the purpose of providing for the transportation of the coal and fixing the percentage of the tide-water price that should be appropriated to pay the charges for transportation, the form in which the arrangement was made is, we submit, wholly immaterial. Suppose the contracts had been actually made in the names of the several railroad companies, instead of the names of the coal companies owned by them. The fact that they purported on their faces to be contracts of purchase would not have been sufficient to exclude them as evidence; and this is just what was done in the case of the Delaware, Lackawanna and Western Railroad Company, which has five different contracts for the purchase of coal, all substantially the same in their terms as the contracts entered into by the coal companies belonging to the other railroad companies.

The Commission was not bound to accept the language or forms of the contracts as conclusive of their real purpose and intent in such a case as this, but had a right not only to ascertain what their

terms were, but also to ascertain how the parties interested construed and executed them. It is claimed that these arrangements were mere devices to fix the rates for transporting the so-called purchased coal and for dividing the traffic in that coal between different and competing roads in violation of the statute. Without the production of the contracts themselves the inquiry on these points can not be intelligently conducted. The statute expressly authorizes the Commission "to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation," and in order to sustain its orders in the present case it is only necessary to show that the contracts "related" to some one or more of the alleged violations of the law charged in the petition.

The identity of the railroad companies and the coal companies owned and controlled by them in respect to all matters relating to the business of mining, transporting, and selling coal is so thoroughly established by the evidence in this case that there is no escape from the conclusion that the contracts in controversy directly and necessarily affect the rates which the carriers actually receive for the service rendered. Whether the rates appear to be increased or reduced according to the contracts and the books of account kept by the carrier, the fact remains that the percent-

age for which the freight is sold in excess of the price to be paid the operators, less the costs of selling, is the sum actually received by the carrier, either directly or into the treasury of its coal companies.

2. THE VOUCHERS AND ORAL TESTIMONY.

The witness, Post, although required to do so, refused to produce the original vouchers for the months of April and May, 1901, April and May, 1902, and the months of January and February, 1903, showing the transactions for the purchase and transportation of coal contracted for by the Delaware, Lackawanna and Western Railroad Company from five independent coal companies. (Rec., p. 453; 7th assignment of errors, p. 840.) The witnesses, Thomas and Truesdale, were asked various questions concerning the sale of the anthracite coal procured under contracts, by whom the prices were fixed, and whether they were fixed by agreement between the presidents of the different coal roads, etc., all of which they refused to answer. These questions are set forth in the assignment of errors on pages 840–841 of the record.

1. The Delaware, Lackawanna and Western Railroad Company procured coal directly in its own name from five independent or private operators of mines under contracts similar to those made by the coal companies owned by the other railroad companies. These were part of the contracts called

for by the Commission, but not produced as evidence. The vouchers which were ordered to be produced were relevant and material because they would show the amount per ton allowed by the railroad company to the mine owner, and as the market price of the different grades of coal at the several dates specified could be shown by the testimony of witnesses, the actual amount reserved to pay for transportation after deducting the cost of selling could be readily ascertained. Thus it would be ascertained whether the railroad company had been receiving more or less than its published rates for the transportation of that coal. If the amount remaining was less per ton than the published rates which were charged to all shippers who did not transfer their product to the carrier, it is evident that the latter class of shippers were subjected to undue or unreasonable prejudice or disadvantage, in violation of the third section of the statute.

2. The relevancy and materiality of the oral evidence asked for and refused must depend upon the decision of the questions already discussed in connection with the production of the contracts. If the interests of the railroad companies and the coal companies, in whose names the contracts were made, are, as we have insisted, identical in this transaction, the evidence asked for was material to show:

(*a*) The price at which coal was being sold at tide water, because 35 per cent of that price, less

the costs of selling, must pay for the transportation;

(*b*) To show the absence of competition in fixing the price at tide water, which is the same thing as absence of competition in fixing the rate for carrying, because the rate received for carrying is a certain percentage of that price; and

(*c*) To show that the presidents and other officials of the railroad companies are the parties who fix the price of coal, thereby fixing the compensation for carrying, although in so doing they may claim to act as officials of the railroad coal companies and not as officials of the carrier companies.

3. TEMPLE IRON COMPANY CONTRCTS.

Two witnesses, George F. Baer and E. C. Hebbard, were required to produce certain contracts made in February, 1899, between the Guaranty Trust Company of New York, the Temple Iron Company, the Reading Company, and five of the respondent railroad companies. Hebbard has not been cited to appear on this appeal and Baer is the only witness now proceeded against in respect to this matter.

The eighth assignment of errors is as follows:

> Eighth. The court erred in dismissing the petition of the Interstate Commerce Commission for an order requiring George F. Baer to produce an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Com-

pany of New York, and the Reading Company; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Lehigh Valley Railroad Company; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Delaware, Lackawanna and Western Railroad Company; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the Central Railroad Company of New Jersey; an agreement dated February 27, 1899, between the Temple Iron Company, the Guaranty Trust Company of New York, and the New York, Susquehanna and Western Railroad Company.

The history of these contracts is given in the testimony of Baer (Rec., pp. 435–443, 527–543). It appears that in the latter part of the year 1899 the so-called independent operators of coal mines in the Lackawanna anthracite coal region organized a railroad corporation, called the New York, Wyoming and Western, to construct and operate an independent railroad from that coal field to tide water. Practically all of the independent operators in that region whose output had not been sold under contract to the railroad coal companies subscribed to the capital stock of the new railroad company and pledged to it the output of their

the costs of selling, must pay for the transportation;

(*b*) To show the absence of competition in fixing the price at tide water, which is the same thing as absence of competition in fixing the rate for carrying, because the rate received for carrying is a certain percentage of that price; and

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mines; surveys were made, rights of way were secured, and about 7,000 tons of steel rails were purchased. This projected railroad would have created competition in the business of mining, transporting, and selling anthracite coal.

The firm of Simpson & Watkins, owners of eleven collieries, were powerful and active supporters of the projected railroad. In order to eliminate them from this enterprise and prevent the projected railroad from being built, five of the carriers—the Lehigh Valley, the Central of New York, the Delaware, Lackawanna and Western, the Erie, the New York, Susquehanna and Western—together with the Reading Company, which owns the Philadelphia and Reading Railroad Company, all together controlling about 90 per cent of the area of unmined anthracite coal, caused all the collieries of Simpson & Watkins to be purchased. In order to pay for them the six companies named, represented in the matter by George F. Baer, caused to be purchased the charter of the Temple Iron Company, a Pennsylvania corporation with a capital stock of $240,000, which was operating an iron furnace near Reading.

This company then issued several million dollars of stock and bonds, and the six companies, by agreement with one another and with the Temple Iron Company, and the Guaranty Trust Company of New York, as trustee, guaranteed 6 per cent dividends upon the Temple Iron Company stock and

the payment of the principal and interest upon its bonds in the following proportions: The Reading Company, 29.96 per cent; the Lehigh Valley Railroad Company, 22.88 per cent; the Central Railroad Company of New Jersey, 17.12 per cent; the Delaware, Lackawanna and Western Railroad Company, 19.52 per cent; the Erie Railroad Company, 5.84 per cent, and the New York, Susquehanna and Western Railroad Company, 4.68 per cent. These purchases and contracts stopped the construction of the projected railroad at once. The directory of the Temple Iron Company, since these contracts were made, includes the presidents of the railroad companies mentioned. The transportation of the output of the collieries purchased is still divided in the same proportions as it was prior to the transfer. Some of the mines are reached by several of the carriers, and it appears that some arrangement exists under which one road carries the output one month and another the next month, but the precise terms agreed upon for the division of the tonnage is not yet disclosed in the record.

These contracts, if produced in evidence, would conduce strongly to show a pooling of this freight between these different and competing roads in violation of the fifth section of the Act to regulate commerce. It is not reasonable to suppose that these railroad companies would guarantee the payment of annual dividends upon the capital stock and the payment of the bonds of the Temple Iron

Company unless there was also an agreement and understanding among them that the traffic from the mines owned by that company should be pooled or divided upon substantially the same basis, or that the division of the freight which had been previously agreed upon should remain permanently as it was. Referring to these contracts, the court below said:

> If the defendants were being prosecuted under the Sherman antitrust act for having entered into a combination, agreement, or contract in restraint of trade, the contracts in question would be relevant testimony. This, however, is not a prosecution under the antitrust act, nor is the Interstate Commerce Commission the forum before whom such a prosecution is conducted.

Of course it is not contended that the Interstate Commerce Commission can annul the contracts or punish or enjoin and restrain the parties to them as a court might do under the provisions of the antitrust act; but if it finds that in the execution of the contracts acts were being done in violation of the Act to regulate commerce, it has the right to require the carriers to cease and desist from such acts. In the fifth section of the Act it is declared that it shall be unlawful for any common carrier subject to the provisions of the Act "to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and compet-

ing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof"; and in the petition filed with the Interstate Commerce Commission it was distinctly charged that the respondents had combined to pool and divide among themselves freights and freight traffic in anthracite coal.

The contracts called for constitute a most material part of the evidence necessary to show the combination to suppress competition in traffic and to pool the freight, and, in connection with other evidence tending to show that the freight has in fact been pooled, a case would be presented clearly within the jurisdiction of the Commission. It can scarcely be contended by the appellees that the antitrust act was intended to deprive or does deprive the Interstate Commerce Commission of any of the powers conferred upon it, or relieve it from any of the duties imposed upon it by the Act under which it was created. The courts alone have the power to deal effectively with illegal agreements and combinations merely as such, but the Commission has power to deal with the acts done in pursuance of such agreements and combinations when the acts constitute violations of the statutes regulating commerce.

These contracts, and all the facts preceding and following their execution, are admissible in evidence to show the suppression of competition

among these carriers in the transportation of coal from the Lackawanna regions; and the existence or nonexistence of competition for the traffic is one of the important facts to be considered in determining the reasonableness of the rates charged by the carriers. Certainly combinations to suppress competition or a combination which has that effect, whether so intended or not, is a matter which the Commission has the right to investigate, either on its own motion or at the instance of a complainant, whenever it is conducting an inquiry concerning the reasonableness of the rates charged or an inquiry concerning the manner in which the business of interstate commerce is being carried on.

Nor can a witness, when properly required to do so, lawfully refuse to produce books or papers in his possession, upon the ground that he is not a party to the suit or proceeding. (2 Greenleaf on Ev., 14 ed., sec. 305.) If the law exempted witnesses on that ground the administration of justice would be defeated in a great number of cases.

So far as it is claimed by any of the contumacious witnesses that the disclosure of the contents of the papers called for would subject him to a criminal prosecution or furnish evidence against him in any such prosecution or in any proceeding to impose a fine, penalty, or forfeiture, the statute under which the Commission has proceeded affords a complete refutation of it.

The order or decree of the circuit court should be reversed, and the witnesses should be required to produce the papers called for and answer the questions propounded to them.

J. G. CARLISLE,
Special Attorney for the
Interstate Commerce Commission.

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JAMES H. McKEN

Supreme Court of the United States.

OCTOBER TERM, 1903, No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

DAVID G. BAIRD ET AL.,
Appellees.

Notice of Motion to Dismiss Appeal.

TO HENRY M. HOYT, SOLICITOR-GENERAL; HENRY L. BURNETT, UNITED STATES DISTRICT ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK:

You will please take notice that on the 7th day of March, 1904, at the opening of court on that day or as soon thereafter as Counsel can be heard, a motion to dismiss the appeal herein for want of Jurisdiction, a copy of which is hereto annexed, will be submitted to the Supreme Court of the United States for the decision of the Court thereon, and that annexed hereto is a copy of the brief of argument to be submitted with the said motion in support thereof.

GEO. F. BROWNELL,
ADELBERT MOOT,
Attorneys for the Appellees G. A. Richardson and E. B. Sturges.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903. No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs

DAVID G. BAIRD ET AL,
Appellees.

Motion to Dismiss Appeal.

Now come the appellees G. A. Richardson and E. B. Sturges by Geo. F. Brownell and Adelbert Moot, their Attorneys, appearing in their behalf and move the Court to dismiss the appeal in the above entitled cause for want of Jurisdiction on the ground that the order or decree from which this appeal purports to have been taken direct to this court, is an order or decree of the Circuit Court of the United States for the Southern District of New York in a proceeding before said court brought on the petition of the Interstate Commerce Commission, to procure an order requiring certain witnesses—the appellees herein—to produce certain documents and to answer certain questions in a proceeding pending before said Commission, and that there is no warrant in law for a direct appeal to this court from such order or decree.

GEO. F. BROWNELL,
ADELBERT MOOT,
Attorneys for the Appellees
G. A. RICHARDSON,
E. B. STURGES.

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JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

DAVID G. BAIRD ET AL.,
Appellees.

BRIEF ON MOTION TO DISMISS APPEAL.

GEO. F. BROWNELL,
ADELBERT MOOT,
Attorneys for the Appellees
G. A. Richardson and E. B. Sturges.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1903. No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs

DAVID G. BAIRD ET AL.,
Appellees.

Brief on motion to Dismiss appeal on behalf of the appellees G. A. Richardson and E. B. Sturges.

Statement.

This cause comes to this court upon an appeal taken direct to the Supreme Court of the United States from an order of the Circuit Court of the United States for the Southern District of New York, in a proceeding before said Court, brought on the petition of the Interstate Commerce Commission to procure an order requiring the appellees—witnesses before said Commission—to produce certain documents and to answer certain questions in a proceeding then pending before said Commission, wherein William Randolph Hearst was the petitioner and complainant,

and the Philadelphia & Reading Railway Co. and nine other coal carrying railroads were defendants.

Upon the hearing before the court on the 10th day of June, 1903, all of the proceedings had and evidence produced before the Commission up to that time, were considered and it was ordered that the petition be dismissed (Record P. 832–37). From that order this appeal has been taken. (Record 838). Subsequently the proceeding was continued before the Commission. The complainant finished his case, the defendants introduced evidence, the case was finally closed, and since that time has been held from time to time awaiting final argument before the Commission. But one petition was filed covering the cases against the several defendants, and although in the decision at the Circuit Court it was stated (Record, p. 832) that "separate orders, however, should be made in each case, for each case is a separate proceeding instituted in this court against the particular individual" but one order was entered in the Circuit Court (Record P. 836) and but one citation was issued against the Appellees jointly, although the Assignment of Errors deals with the several cases individually and separately.

ARGUMENT.

First. It will probably not be seriously claimed that, prior to the legislation of 1903, there existed any warrant for a direct appeal to this Court from an order of the Circuit Court in a proceeding such as the one in question.

Prior to the passage of the Act of March 3, 1891, creating and establishing the Circuit Court of Appeals, the Act to Regulate Commerce (Section 16) authorized an appeal from the final judgment or decree of the Circuit Court to the Supreme Court of the United States in certain cases. The provisions authorizing

such appeals were superseded by the Act of March 3, 1891, which had for one of its objects the vesting in the newly created Circuit Courts of Appeal, appeals from the Circuit Courts except in the few classes of cases specified in that act.

This appeal cannot be justified under the Act of March 3, 1891, upon the ground that it is in a case "that involves the construction or application of the Constitution of the United States" or in a "case in which the constitutionality of any law of the United States" is drawn in question.

To warrant a direct appeal to the Supreme Court on constitutional grounds, the constitutional question must be a real and material question in the case. It is not sufficient that a constitutional question might have been raised by the appellees had they been defeated in the Circuit Court, or that a different decision or even the same decision upon different grounds might have involved a constitutional question. The constitutional question must be actually in the case and must have been passed upon by the lower court or necessarily involved in what was decided by that court.

Muse vs. Arlington Hotel Co., 168 U. S., 430–435.
Western Union Tel. Co. vs. Ann Arbor R. R., 178 U. S., 239–243.
Lampasas vs. Bell, 180 U. S., 276–282.

The constitutional question must not only be present but it must be the controlling question.

Carter vs. Roberts, 177 U. S., 496–500.
Casey vs. Houston & Texas Cent. Ry., 150 U. S., 170–181.

Although other questions were raised on the argument, it appears from the opinion (Record, p. 832) that the only question considered by the Judge at circuit and the only question decided by the order appealed from herein was as to whether the contracts sought to be obtained and the questions asked of the

appellees were relevant to the proceeding under the complaint. It was decided that they were not, and the petition was, therefore, denied.

Second. Subsequent to the act creating the Circuit Court of Appeals two acts have been passed, under which it may be claimed a direct appeal may be taken to this Court. The first is entitled:

> "An act to expedite the hearing and determination of *suits in equity* pending or hereafter brought under the act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies'; 'An Act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted."

Section 2 provides:

> "That in every *suit in equity* brought in any Circuit Court of the United States, *under any of said acts, wherein the United States is complainant,* * * * an appeal from the *final decree* of the Circuit Court will lie only to the Supreme Court."

And the question arises, is the order appealed from a *final decree* in a *suit in equity wherein the United States is complainant,* brought under the Act of February 4, 1897, or of July 2, 1890, or under "any other acts having a like purpose that may be hereafter enacted"—that is, enacted subsequent to February 11, 1903? The appellees claim that it is not. In the first place, it is to be noted that the provision of the "Expedition Act" above quoted, for a direct appeal to the Supreme Court, does not purport to apply to all proceedings which may be brought under the acts specified, but is expressly limited to appeals from *final decrees in suits in equity wherein the United States is*

complainant, such suits being deemed of sufficient public importance to warrant the allowance of a direct appeal to the Supreme Court, while appeals in other proceedings arising under the Interstate Commerce acts are not affected.

In the second place, this is not a *suit in equity* to enforce any of the provisions of the acts to regulate commerce within the contemplation of the act of February 11, 1903, but is a statutory proceeding to compel the production of certain contracts and the answering of certain questions, and is in the nature of a proceeding for contempt for failure to obey the subpœna and order of the Commission.

In the third place, this appeal is not taken from a *final decree* in any *suit*, but from an order directing witnesses to produce certain documents and answer certain questions in an investigation which was being conducted by the Interstate Commerce Commission, and, furthermore, this proceeding is not brought under either of the acts specified, nor under any act passed subsequent to February 11, 1903, but under acts passed *prior to that date*, which acts amended one of the acts specified. These amendments, although in force on February 11, 1903, are not mentioned in the act in question, and, therefore, it must have been intended that *proceedings under such amendments should be excluded from its operation.*

Third. It may be claimed that the Act of February 19, 1903, entitled:

> "An act to further regulate commerce with foreign nations and among the States,"

authorizes this appeal to be taken directly to this Court. Section 3 of that act provides that the Interstate Commerce Commission may commence proceedings against common carriers by presenting its petition to the Circuit Court of the United States, sitting

in equity, which suits it shall be the duty of the District-Attorney of the United States to conduct whenever the Attorney-General shall so direct, and in such proceedings said Courts shall have the power to compel the production of books and papers and the answering of questions relative to the transaction in question :

> "*Provided* that the provisions of an act entitled 'An Act to expedite the hearing and determination of *suits in*equity, &c.'" (being the Act of February 11, 1903, above mentioned), "shall apply to any case prosecuted under the direction of the Attorney-General, in the name of the Interstate Commerce Commission."

The Act of February 11, 1903, applied only to certain *suits in equity, wherein the United States is complainant.* Section 3 of the Act of February 19, 1903, provides for the bringing of certain suits before the *Circuit Court sitting in equity,* which are to be prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Section 1 of the Act of February 19, 1903, provides for other classes of cases not suits in equity, and not of the kind covered by the Expedition Act of February 11, 1903.

It would, therefore, seem clear that the proviso extending the provisions of the Act of February 11, 1903, to "any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission" was intended to extend these provisions only to those *cases in equity in which the Interstate Commerce Commission was complainant,* as provided in the fore part of the same section, thus placing on the same basis cases in equity brought to enforce the provisions of the Interstate Commerce acts, whether suits in equity wherein the United States is complainant, as provided in the Act of February 11, 1903, or suits before the Circuit Court sitting in equity

wherein the Interstate Commerce Commission shall be complainant, as provided in the Act of February 19, 1903.

If it should be held that by virtue of this *proviso* the provisions of the Expedition Act were extended to proceedings to require the attendance and testimony of witnesses and production of papers, under Section 12 of the Act to Regulate Commerce. The anomalous result would follow that the existence of the right of direct appeal to this Court would depend upon which party invoked the aid of the Court, and what counsel was employed, since the aid of the Circuit Court in any such case may be invoked by any party to the proceeding before the Commission, or by the Commission represented by private counsel, or by the Commission represented by the United States District Attorney. Even under the construction contended for by the appellant, the right of direct appeal could exist only in the last of these three cases.

The clause of Section 3 of the Act of February 19th is in the form of a proviso. The ordinary purpose of a proviso in a statute is to qualify or restrict the statute, or the particular section thereof to which it is attached.

Sutherland on Statutory Construction, Sec. 223.
Minis vs. United States, 15 Peters, 423.
Savings Bank vs. United States, 19 Wall., 227–236.

It is ordinarily applicable only to such statute or section, and should be construed with reference thereto.

Lehigh vs. Meyer, 102 Pa. St., 479.

It will not be deemed from doubtful words to be intended to enlarge or extend the act or provision on which it is engrafted.

In re Webb, 24 How. Pr., 247-249.

The form used indicates that the clause is intended to apply only to the section to which it is attached,

namely, Section 3 of the Act of February 19th, which does not cover a proceeding such as that in which the order appealed from was made.

Independently of the use of the form of a proviso, the very position of the clause at the end of Section 3, in view of the fact that proceedings in the name of the Interstate Commerce Commission under the direction of the Attorney-General are referred to in the preceding portion of the section indicates that the reference to such provisions in the proviso is intended to include only such proceedings as are covered by the preceding portion of the section.

Any doubt that this is the meaning and effect of this proviso will be removed by considering the history of the then existing legislation and the purpose which Congress may be presumed to have had in adding this provision. The Interstate Commerce Act was passed in 1887. Subsequently and in 1891 the Circuit Courts of Appeals were created, and thereafter appeals, except in certain specified cases, went to those Courts. Certain cases arising under the Interstate Commerce Act and under the Act of July 2, 1890, were recognized as of great public importance, and for the purpose of facilitating their speedy determination by the Supreme Court, the Act of February 11, 1903, known as the "expedition act" was passed. This act singled out a class of cases under the Interstate Commerce Acts which were deemed of especial public importance, and provided that in such cases which were described as *suits in equity*, brought under the Acts of July 2, 1890, or February 4, 1887, or any other acts having a like purpose, that might be thereafter enacted *wherein the United States was complainant*, an appeal from the *final decree* of the Circuit Court might be taken direct to the Supreme Court. Having provided for a speedy hearing and a direct appeal to the Supreme Court in certain important cases which were specifically mentioned in the act, it is not to be presumed that Congress also intended to place upon the Supreme Court the burden of hearing appeals in other

and less important proceedings, but rather that such appeals should still be taken to the Circuit Courts of Appeals in accordance with the policy of relieving the Supreme Court under which the Circuit Courts of Appeals were created. Thereafter and on February 19, 1903, Congress passed another act. This new act provided for suits before the Circuit Court sitting in equity to enforce provisions of the Interstate Commerce Acts, which suits should be prosecuted by the Attorney-General upon the petition of the Interstate Commerce Commission. It was an "Act having a like purpose thereafter enacted" within the terms of the Act of February 11, 1903, and in order to make it perfectly clear that the expedition act applied to these suits the proviso in question was added.

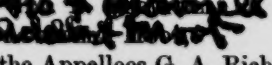
The two acts were under consideration by Congress at substantially the same time, and are part of the same scheme of legislation, and an examination of the whole act and the words used shows clearly that Congress did not intend by this proviso to extend the general scope of the "expedition act," or to accomplish any other purpose than to make it clear that the Act of February 11, 1903, applied to the *suits in equity* mentioned in the new act.

It is provided that the "expedition act" "shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission." The word case is evidently used as synonomous with suit, referring to the suits in equity mentioned in the act. The words case and suit are used interchangeably in the Interstate Commerce Acts; for example, in the Act of February 11, 1903, Section 1, line 3, refers to *any suit*, and subsequently, in the same section, the same suit is referred to as *the case* and as *such case*. In construing a statute the meaning of particular words may be inferred from earlier statutes in which the same words have been used where the intent was more obvious.

See Sutherland on Statutory Construction, S. 229.

It is further to be noted that the Act of February 19, 1903, provides for proceedings to enforce provisions of the Interstate Commerce Acts (see Sec. 1) other than the suits in equity prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission. These other cases belong to classes which were not brought within the scope of the " expedition act " at the time that act was passed and in order to exclude such cases and carry out the general plan theretofore adopted it was provided that the expedition act should apply not to all cases covered by the act of February 19, 1903, but only to such of the cases provided for by that act as were prosecuted by the Attorney-General in the name of the Interstate Commerce Commission, thereby describing the suits in equity mentioned in the preceding portion of the section.

Fourth. It appearing that there is no warrant in law for a direct appeal to this court in this proceeding under the Acts of March 3, 1891, of February 11, 1903, or of February 19, 1903, and as these are the only acts which have any bearing upon appeals of this character, it is respectfully submitted that the motion of the appellees should be granted and the appeal dismissed.



Attorneys for the Appellees G. A. Richardson and E. B. Sturges.

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Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

October Term, 1903. No. 409.

The Interstate Commerce Commission, Appellant,

vs.

David G. Baird, Fred F. Chambers, George O. Waterman, et al.

NOTICE OF MOTION TO DISMISS APPEAL.

To the Attorney General of the United States, Hon. Henry M. Hoyt, Solicitor General, Henry L. Burnett, Esq., U. S. District Attorney, Attorneys for Appellant.

GENTLEMEN:—Please take notice that the Appellees below named will on Monday the 7th day of March, next, (1904), or as soon thereafter as counsel can be heard, present to the Court a motion to dismiss the appeal herein, a copy whereof and of the appellees' brief thereon are attached hereto.

J. D. CAMPBELL,
Attorney for George F. Baer and William G. Brown, Appellees.

ROBERT THORNE,
R. W. DEFOREST,
Attorneys for George O. Waterman, Appellee.

FRANCIS I. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
Attorneys for E. B. Thomas and David G. Baird, Appellees.

SUPREME COURT OF THE UNITED STATES.

October Term, 1903. No. 409.

The Interstate Commerce Commission, Appellant,

vs.

David G. Baird, Fred F. Chambers, George O. Waterman, et al.

MOTION TO DISMISS APPEAL.

Now come the appellees below named and move the court that the above-entitled appeal, which is taken direct to this court from the order of the Circuit Court of the United States for the Southern District of New York, be dismissed for the reason that the same is not cognizable in this court, but should have been taken to the Circuit Court of Appeals.

J. D. CAMPBELL,
Attorney for George F. Baer and William G. Brown, Appellees.

ROBERT THORNE,
R. W. DEFOREST,
Attorneys for George O. Waterman, Appellee.

FRANCIS I. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
Attorneys for E. B. Thomas and David G. Baird, Appellees.

Supreme Court of the United States.

The Interstate Commerce Commission,
Appellant,

vs.

David G. Baird, Fred. P. Chambers, George O. Waterman, et al.

BRIEF ON MOTION TO DISMISS APPEAL.

J. B. CAMPBELL,
Attorney for George O. Waterman, Appellee.

ROBERT THOMAS,
A. W. de FOREST,
Attorneys for George O. Waterman, Appellee.

FRANCIS L. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
Attorneys for D. G. Baird and Fred. P. Baird, Appellees.

FEBRUARY 8TH, 1904.

Allen, Lane & Scott, Pr., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1903. No. 409.

The Interstate Commerce Commission, Appellant,

vs.

David G. Baird, Fred. F. Chambers, George O. Waterman, et al.

BRIEF SUR MOTION TO DISMISS ON BEHALF OF DAVID G. BAIRD, GEORGE O. WATERMAN, GEORGE F. BAER, EBEN B. THOMAS, AND W. G. BROWN, APPELLEES.

I.

The present proceeding had its inception in the Circuit Court of the United States for the Southern District of New York, through a petition filed by the Interstate Commerce Commission praying for an order to compel the production of certain documents and answers to certain questions, deemed by the Commission to be material to the issues in a certain proceeding pending before it in which William R. Hearst was complainant and certain railroad companies defendants.

The appellees herein and the respondents in the proceeding below were witnesses who had declined under instruction of counsel to produce the documents called for or to answer the questions propounded to them.

The Circuit Court dismissed the petition of the Commission upon the ground that the documents, which the Commission had directed should be produced and the ques-

tions which it had directed the witnesses to answer, were irrelevant to any issue involved in the proceeding before it. From this action of the Circuit Court this appeal was taken. The motion to dismiss is now made upon the ground that no warrant exists for an appeal direct to this court from the decree of the Circuit Court.

II.

As was well remarked by the Circuit Judge (Record, page 832):—

> "There are several witnesses proceeded against, although for convenience their cases have been heard together on a single petition. Separate orders, however, should be made in each case, for each case is a separate proceeding, instituted in this court against the particular individual."

Notwithstanding this view of the matter—which is undoubtedly correct—the final order entered in the Circuit Court (Record, page 836) took a consolidated form, as though the several individuals were joint respondents or defendants in a joint proceeding; and but a single citation issued directed to the various appellees jointly, omitting, however, the name of E. C. Hebbard, secretary of the Guaranty Trust Company of New York, who was one of the respondents below, but who was not cited here, and is not therefore a party to this appeal.

The assignments of error, however, as was necessary, deal with the several cases individually and separately.

III.

It may, we think, be safely assumed that the learned counsel for the appellant will concede that, under the legislation of Congress prior to that enacted at the last session, there existed no warrant for the appeal to this court from the order or decree of the Circuit Court.

The decisions of this court have clearly determined that the provisions of the Act to Regulate Commerce, author-

izing and directing appeals directly to the Supreme Court, have been superseded by the Act of March 3d, 1891. That Act, creating and establishing the Circuit Courts of Appeal, undoubtedly had for one of its objects the vesting in the courts thereby created of the great body of appeals from the Circuit Courts. Section V. of the Act defines the cases in which an appeal could be taken directly to this court. But clearly the present case does not come within any of the cases covered by that section, which reads as follows:—

> "SECTION 5. That appeals or writs of error may be taken from the district courts or from the existing circuits courts direct to the Supreme Court in the following cases:
>
> "In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.
>
> "From the final sentences and decrees in prize causes.
>
> "In cases of conviction of a capital or otherwise infamous crime.
>
> "In any case that involves the construction or application of the Constitution of the United States.
>
> "In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.
>
> "In any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States.
>
> "Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State, nor the construction of the statute providing for review of such cases."

It is true that in some of the answers below, as, for instance, in that of Brown (Record, page 116), tentative

and argumentative suggestion was made to the effect that—

> "This respondent is further advised, and so alleges and charges that in case it shall be held that the said 'Act to Regulate Commerce' confers upon the Commission power to require by subpœna or otherwise the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents not directly and solely relating to matters under investigation pursuant to the provisions of the said Act, then the said Act is unconstitutional and void, being in direct violation of the provisions of the fourth amendment to the Constitution of the United States, and in derogation of the right of this respondent and of the corporation of which he is an officer to have its private books and private affairs as a merchant protected from unreasonable search or seizure."

But this secondary and conditional averment is not enough. The decisions of this court settle that the jurisdictional questions must inhere in the case actually and substantially, and not remotely and secondarily, and that the question upon which the appellate jurisdiction depends must have been decided by the court below, or have been necessarily involved in what was decided.

Ansbro *vs.* United States, 159 U. S., 695-697;
Cornell *vs.* Green, 163 U. S., 75-78;
Muse *vs.* Arlington Hotel Co., 168 U. S., 430-435;
Western Union Tel. Co. *vs.* Ann Arbor R. R., 178 U. S., 239-243;
Lampanas *vs.* Bell, 180 U. S., 276-282;
Carey *vs.* Houston and Tex. Cent. Ry. Co., 150 U. S., 170;
Carter *vs.* Roberts, 177 U. S., 496-500;
Defiance Water Co. *vs.* Defiance (decided this term);
Arbuckle *vs.* Blackburn (decided this term).

The question must not only be present in the case, and be a primary and real and substantial issue, but it must also be the controlling question, and not merely incidental and collateral and argumentative.

Carey *vs.* Houston and Tex. Cent. Ry., *Ub. sup.*

In this case the sole questions considered and determined by the Circuit Judge were whether the documents called for and the answers required from the witnesses were "relevant to the questions of reasonable rates, discrimination, &c., which were presented by the complainant in the prosecution," pending before the Interstate Commerce Commission. See opinion of the court (Record, page 832). No constitutional question was considered or passed upon.

The constitutional right thus asserted in some of the answers of the defendants was not relied upon nor set up by all of them.

IV.

But it seems to have been thought by the learned counsel for the appellant that the provisions of two Acts passed at the last session of Congress warrant this appeal. These Acts are those of February 11th, 1903, and February 19th, 1903. The former Act is entitled:—

> "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July 2d, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February 4th, 1887, or any other Acts having a like purpose that may be hereafter enacted."

The first section provides for the expeditious hearing of "*any suit in equity* pending or hereafter brought in any Circuit Court of the United States," under the Acts referred to in the title, "*wherein the United States is complainant.*"

Section 2 regulates appeals in such cases and is as follows:—

> "That in every suit in equity pending or hereafter brought in any Circuit Court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the Circuit Court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a Circuit Court to the Circuit Court of Appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law."

It will be observed that this Act deals exclusively with suits in equity, in which the United States is a complainant. The present proceeding is not a suit in equity, and the United States was not the complainant therein, and hence it is not within the purview of the Act. It is a statutory proceeding, specially provided for by the Interstate Commerce Acts, and does not present a case for the cognizance or consideration of a Court of Equity, and the complainant therein was the Interstate Commerce Commission and not the United States.

But the proposition that this proceeding is not within the purview of this Act would seem to be so clear that we should not be justified in further arguing it, and its correctness doubtless will be conceded by counsel for the appellant.

Is the appeal then warranted by the Act of February 19th, 1903? Sections 1, 2, 4, and 5 contain, it is believed, nothing pertinent to or bearing upon the question raised by this motion. This latter Act is entitled "An Act to further regulate commerce with foreign nations and among the States."

The proviso to Section 3 is doubtless relied upon by the

appellant as justifying the appeal to this court. This Section provides as follows:—

"That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the public rates on file, or is committing any discrimination forbidden by law, a petition may be presented alleging such facts to the Circuit Court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several District Attorneys of the United States, whenever the Attorney General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February 4th, 1887, entitled 'An Act to regulate com-

merce' and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding; *Provided*, That the provisions of an Act entitled 'An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," "An Act to regulate commerce," approved February 4th, 1887, or any other Acts having a like purpose that may be hereafter enacted, approved February 11th, 1903,' shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission."

This section, it will be observed, authorizes a new class of proceedings against carriers in the Circuit Courts of the United States at the instance of the Interstate Commerce Commission, to be conducted by the District Attorneys of the United States under the direction of the Attorney General, provides for the compulsory attendance of witnesses, both upon the part of the carrier and shipper, and then enacts through and by means of the proviso "That the provisions of an Act" (*i. e.*, that of February 11th, 1903) "shall apply to any case prosecuted

under the direction of the Attorney General in the name of the Interstate Commerce Commission."

As the present proceeding is not within the class of cases which are authorized by the section, the first question to be determined is whether Congress intended by the proviso to extend the provisions of the Act of February 11th, 1903, to "any case," prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission, generally, and without regard to the consideration whether it was a case of the character authorized by the section of which the proviso forms a part. That it did not so intend is the contention of the appellees.

It is an accepted rule or canon of statutory construction that a proviso is presumed to have relation to the provisions of the Act or section of which it forms a part. A good illustration of this rule is furnished by the decision of this court in the case of Minis *vs.* United States, 15 Peters, page 423. In that case, this court was obliged to construe a proviso to an Act making certain appropriations in the year 1835 for certain harbors and for removing obstructions in certain rivers. The Act contained this proviso: "*Provided* that no officer of the army shall receive any per cent. or additional pay, extra allowance or compensation, in any form whatsoever, on account of disbursing any public money appropriated by law, during the present session, for fortifications, execution of surveys, works of internal improvement, building of arsenals, purchase of public supplies of any description, or for any other service or duty whatsoever, unless authorized by law."

It became necessary to determine whether the last portion of the proviso was a general provision, applicable to the future, and this court dealt with this proposition in the manner indicated by the following extract from the opinion of Mr. Justice Story:—

> "The argument on behalf of the United States is that this proviso, although found in a mere appropriation law of limited nature, is to be construed, by

reason of the words 'or for any other service or duty whatsoever, unless authorized by law,' to be permanent in its operation, and applicable to all future appropriations, where officers of the army are employed in such service or duty; and that it appears from the record that this was the very ground on which the Treasury Department rejected the claim of Dr. Minis for commissions. * * * We are of the opinion that such is not the true interpretation of the terms of the proviso, and that it is limited exclusively to appropriations made at the session of 1835.

"It would be somewhat unusual to find engrafted upon an Act making special and temporary appropriation any provision which was to have a general and permanent application to all future appropriations. Nor ought such an intention on the part of the legislature to be presumed unless it is expressed in the most clear and positive terms, and where the language admits of no other reasonable interpretation. The office of a proviso, generally, is either to exempt something from the enacting clause or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it as extending to cases not intended by the legislature to be brought within its purview. A general rule, applicable to all future cases, would most naturally be expected to find its proper place in some distinct and independent enactment."

Applying the principle adopted by this court in the case just referred to to the present one requires, we submit, that the words "any case" should be construed as any case of the class mentioned in the section, and such limitation would be only in consonance with well-settled rules of statutory construction.

The qualifying words used in the proviso in connection with and as further defining or limiting the words "any case" also substantiate this view. It results from these that the cases covered by the proviso are only those prosecuted under the direction of the Attorney General

in the name of the Interstate Commerce Commission. It is precisely this class of cases that Section 3 of the Act we are considering deals with, and this class alone.

These qualifying or limiting words are also important in another aspect of the case. If the words "any case" as used in the proviso are to be given such a wide and general signification as to bring within their scope any proceedings of whatever character under the Interstate Commerce Acts, only provided they are instituted by the Interstate Commerce Commission and are under the direction of the Attorney General, we would have this curious result. There are a certain class of cases, of which the present is one, in which the proceedings may or may not be conducted under the direction of the Attorney General, this being a matter for the decision of the Interstate Commerce Commission. It would result from this, therefore, that the question as to the court to which an appeal would lie from the Circuit Court would be determinable, not with reference to the character of the proceeding or the issues involved therein, but with reference solely to the personnel of the counsel conducting the proceeding. Thus in the present case the appeal would lie to the Supreme Court, because the proceeding is under the direction of the Attorney General, whereas if the Commission had chosen to have the proceeding conducted by its own counsel or by the counsel for the complainant in the proceeding before it, the appeal would lie to the Circuit Court of Appeals. Certainly this court should be loath to adopt a construction of this proviso which would bring about such a result.

But there is also a strong argument in support of the contention of the appellees, based upon the consideration that the provisions of the Act of February 11th, 1903, which this proviso extends to cases which it was dealing with are of such a character as to make it clear, we submit, that Congress had in mind, when it used in the proviso the words "any case," the limited class of cases which we contend for, or, at the furthest, cases of a similar character to those dealt with in the Act whose provisions were thus extended.

Undoubtedly the Act of February 11th, 1903, deals exclusively with suits in equity, and we submit that by making applicable its provisions (dealing as they do exclusively with the procedure to be followed in the certain class of "suits in equity" therein mentioned) to "any case prosecuted," &c., Congress intended to enact thereby merely that such procedure should be extended to suits in equity "prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission," the Act of February 11th, 1903, applying by its terms only to suits in equity, wherein the United States was complainant. Whether these should be suits in equity generally or merely the particular class of equitable proceedings authorized by the Act containing this proviso need not be determined for the purposes of this motion.

The procedure provided for in the Act of February 11th, 1903, is, if not inapplicable, at least but illy adapted to any other than equity proceedings. In fact, as to actions at law, the Act is wholly inapplicable, since it provides for a hearing by judges and makes no provision for a jury.

If we are to treat the proviso as intended to extend the provisions of the Act of February 11th, 1903, to other cases than those embraced within the provisions of the Act of February 19th, 1903, then its purpose could have been as well, and, indeed, better accomplished by an amendment to the Act of February 11th, for this is what, in effect, under such a construction it amounts to. What, then, would have been its construction had the proviso been enacted as an amendment to the Act of February 11th, and would any significance have been given the word "case" instead of "suit in equity," with which character of cases alone the Act of February 11th itself deals?

The amendment, if we paraphrase the language of the proviso, would then have been in this form: "The provisions of the Act entitled, &c., shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission."

Could any one have fairly contended that the word "case" in this connection meant anything else than "suit in equity?"

In the Act of February 11th, 1903, the word "case" is used a number of times as synonymous with "suit." Thus if the Attorney General shall certify that the "case is of general public importance," this shall be made known to the judges of the Circuit Court "in which the case is pending. Thereupon such case shall be given precedence." And then it is provided that if the "judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court." And so on in several other instances.

It is clear, therefore, from the context itself of this Act of February 11th, 1903, that Congress used the words "case" and "suits" interchangeably as signifying the same thing.

It is apparent that the purpose of the Act of February 11th, 1903, was to provide a system under which cases of moment or of public importance—suits in equity in which the United States was complainant—could be dealt with expeditiously. Had the proviso, which we are considering, any other purpose than the extension or application of this system to cases of a like character instituted by the Interstate Commerce Commission?

The proceedings upon behalf of the Commission, which the Act of February 19th, 1903, specially authorizes, would presumably be of this character; proceedings to enjoin some violation of the Interstate Commerce Acts, which would undoubtedly only be brought when the interests of the public or a large portion thereof were involved. A reason, therefore, existed for extending to such cases the same expeditious hearing that would have been accorded to them had the United States been the complainant therein. But it was never intended, we submit, that if, in a proceeding pending before the Commission, in which some shipper was complaining of a rate charged him as too great or as discriminative, a question should arise as to the relevancy of certain testimony which rendered it necessary that re-

sort should be had, as in the present case, to the Circuit Court of the United States, such a proceeding should be accorded the expeditious consideration provided for by the Acts in question.

For the reasons given, therefore, we respectfully submit that the motion to dismiss should prevail.

J. D. CAMPBELL,
Attorney for George F. Baer and William G. Brown, Appellees.

ROBERT THORN,
R. W. DEFOREST,
Attorneys for George O. Waterman, Appellee.

FRANCIS I. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
Attorneys for E. B. Thomas and David G. Baird, Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1903. No. 409.

The Interstate Commerce Commission, Appellant,

vs.

David G. Baird, Fred. F. Chambers, George O. Waterman, et al.

BRIEF OF ARGUMENT ON BEHALF OF GEORGE F. BAER AND WILLIAM G. BROWN, APPELLEES.

STATEMENT OF THE CASE.

These cases originated by the presentation of the petition of the Interstate Commerce Commission, to the judges of the Circuit Court of the United States for the Southern District of New York (Record, page 2), which set forth among other things, that:—

On November 2d, 1902, the petition and complaint of William Randolph Hearst, against the Philadelphia and Reading Railway Company, and nine other railroad transportation companies was received by the Commission and filed in its office; that a copy of the complaint was forthwith forwarded by the Commission to each of the carriers named in the complaint; that thereafter each of the carriers named in the complaint made answer thereto and said answers were filed by the Commission in its office;

that on March 12th, 1903, the Commission ordered a hearing on said complaint at the post office building in the city of New York on April 21st, 1903. (Record, page 2.)

The petition then proceeds to recite the issuance and due service of subpœnas upon the various witnesses named in this proceeding and others, and the attendance of the Commission and the attorneys of the parties at the hearing April 21st, 1903 (Record, page 2, 3), at the post office building in the city of New York.

The Hearst complaint appears on the Record, page 39, and charges the exaction of unjust and unreasonable rates on anthracite coal, which are also discriminative by comparison with rates on other traffic; that rates are fixed and maintined by combination and agreement; that the traffic is pooled or divided between the different lines in agreed proportions, and that earnings are pooled, &c.

All which allegations are denied under oath, either generally or specifically and in more or less detail by the various respondents. (See answers, Record, pages 45 to 54.)

The answer of the PHILADELPHIA AND READING RAILWAY COMPANY to the Hearst complaint is in substance as follows (Record, page 52):—

> "1. This defendant admits that in respect of a comparatively small proportion of the anthracite and bituminous coal carried by it over portions of its lines, it is a common carrier subject to the provisions of the Act entitled 'An Act to regulate commerce,' approved February 4th, 1887, and the Acts amendatory thereof and supplemental thereto, so far as they are valid.
>
> "2. This defendant, however, denies that it is doing, or has done or committed any act or thing whatsoever, or has omitted or is omitting any duty in violation of the said Act or its said amendments or supplements, and it specifically denies in general and in detail each and every charge, statement, or inference contained in said petition to the contrary thereof, and that each and every charge of unlawful combination, confederation, or agreement respecting any of the said several matters and things

"3. And further answering in respect of the said charges of unlawful combination, confederation, agreement, pooling, &c.

* * * * * *

"This defendant avers that every charge contained in the said paragraph of unlawful agreement, combination, or confederation in any manner or form, or for any purpose whatsoever, is false and untrue."

And thus the issues were joined on which the Commission proceeded to hearing.

As to the Case of William G. Brown, Appellee.

The petition of the Commission to the Circuit Court shows (Record, page 10):—

At the hearing on April 22d, 1903, William G. Brown was called as a witness on behalf of the complainant, and, having been duly sworn, the following proceedings took place:—

MR. SHEARN:—Q. Mr. Brown, you are the secretary of the Philadelphia and Reading Coal and Iron Company?

MR. BROWN:—A. Yes, sir.

MR. SHEARN:—Q. That is a corporation organized under the laws of what State?

MR. BROWN:—A. The State of Pennsylvania.

MR. SHEARN:—Q. Who is the president of the Philadelphia and Reading Coal Company?

MR. BROWN:—A. George F. Baer.

MR. SHEARN:—Q. What business is the Philadelphia and Reading Coal and Iron Company engaged in?

MR. BROWN:—A. In the mining and sale of coal.

MR. SHEARN:—Q. What is the capital stock of the company?

MR. BROWN:—A. $8,000,000.

MR. SHEARN:—Q. Who owns it?

MR. BROWN:—A. It is owned almost entirely by the Reading Company.

MR. SHEARN:—Q. s it not owned entirely by it?

MR. BROWN:—A. t is owned entirely.

COMMISSIONER PROUTY:—Q. What is the Reading Company?

MR. CAMPBELL:—A. It is a corporation which holds the stock, as well as other investments, the stock of the Philadelphia and Reading Coal and Iron Company, the stock of the Philadelphia and Reading Railway Company ——

* * * * * * *

MR. SHEARN:—Q. Mr. Brown, you, as secretary of the coal and iron company, have custody of its papers and contracts, have you not?

MR. BROWN:—A. I have; yes, sir.

MR. SHEARN:—Q. You have been served with a subpœna to produce all contracts entered into between the Philadelphia and Reading Coal and Iron Company and third parties for the purchase of anthracite coal, since January 1st, 1901, have you not?

MR. BROWN:—A. Yes, sir.

MR. SHEARN:—Q. Are there such contracts in existence?

MR. BROWN:—A. There are.

MR. SHEARN:—Q. How many of such contracts? * * *

MR. BROWN:—A. I do not remember the exact number; six, seven, or eight, possibly. * * *

MR. SHEARN:—Now, produce those contracts, please.

MR. CAMPBELL:—The witness is instructed to decline to produce the contracts, for the reason stated by Mr. Thorne in respect to the demand made upon the Lehigh and Wilkes-Barre Company, and counsel asks the stenographer to set forth in the record these reasons.

I advise the witness to decline to produce the contracts and I take it the Commission will deliver its directions as it has done in the other case.

THE CHAIRMAN:—By your objection you refer to what has been stated by other counsel?

(The objection stated by Mr. Thorne in connection with the examination of George O. Waterman, secretary of the Lehigh and Wilkes-Barre Coal Company is as follows: (Record, page 8.)

"Witness, under advice of counsel, declines to produce the contracts for the reason that they are not germane to

any issue presented before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and they are contracts with third parties who are not parties to this proceeding and action, and are private business and should not be made public and disclosed in this proceeding."

THE CHAIRMAN:—The objections are overruled, and the Commission directs the witness to produce the contracts. (After a pause) The witness declines to do so, under the advice of counsel. (Record, page 12).

June 2d, 1901, on consideration of the petition of the Interstate Commerce Commission the Circuit Court awarded a rule upon the various witnesses named in the petition to appear and show cause why the prayer of the Commission should not be granted and orders entered accordingly. (Record, page 1.)

The witness, Brown, appeared with others and answered the rule in writing, under oath, substantially as follows: (Record, page 112.)

> "I. That he is the secretary of the Philadelphia and Reading Coal and Iron Company, a corporation of Pennsylvania, created by and existing under an act of the General Assembly of the State of Pennsylvania, approved May 8th, A. D. 1871, with power, among other things, 'to purchase, sell, transport and mine coal, and to mine and manufacture iron, * * * to acquire by purchase, or otherwise such lands as they may deem expedient; * * * to lease, sell, mortgage, or otherwise dispose of such land, or any rights, easements, or privileges therein; * * * construct all necessary buildings and fixtures necessary for the business of mining and for preparing coal for market, mining and manufacturing iron, and the accommodation of persons engaged in their employ in said business,' a copy of which said Act and of the proceedings whereby the name of the company was changed from the Laurel Run Improvement Company to the Philadelphia and Reading Coal and

Iron Company are hereto annexed and made part hereof, marked 'Exhibit A.' (See Record, page 117).

"II. This respondent admits the creation and existence of the petitioner as alleged, and also the exhibition to them of the petition and complaint of William Randolph Hearst against the various railroad companies in the petition mentioned. He admits the allegations of the petition in respect of the hearing of the said last-mentioned petition and complaint within the southern district of New York.

"III. This respondent further admits that the said Interstate Commerce Commission, on the application of the attorney for the said petitioner and complainant, awarded its writ of subpoena *duces tecum* to him directed commanding him 'to produce all contracts for the purchase or transportation of anthracite coal entered into since January 1st, 1901, between the Philadelphia and Reading Coal and Iron Company and any and all purchasers of anthracite coal or owners or operators of anthracite coal mines.'

* * * * * * *

"3. This respondent is further advised, and therefore alleges and charges, that the books, papers, tariffs, contracts, agreements, and documents which the Commission has power under the act to regulate commerce to require to be produced, are only and solely books, papers, tariffs, contracts, agreements, and documents of the carrying companies subject to the act to regulate commerce, or of consignors or consignees having contracts with such carriers where the subject matter of such contracts are being inquired into, and that the said provisions of the said Act of Congress confer no power whatsoever upon the Commission to search for or inquire into or expose the private papers or other papers of parties not directly concerned in matters committed to the said Commission.

"This respondent, for himself and for his said company admits that the proceedings at the hearing be-

fore the Interstate Commerce Commission on April 22d, 1903, and set forth in folios 34 to 40, inclusive, referring to pages 243 to 258 of the stenographer's minutes of said proceedings—though not fully—are sufficiently set forth in the said petition of the Interstate Commerce Commission to this court, save and except that the objection to the production of the said papers stated by counsel is omitted, which said statement was set forth by Mr. Thorne, of counsel with the Lehigh and Wilkes-Barre Coal Company, as shown on page 220 of the said stenographer's minutes in the words following:——

"'MR. THORNE:—Witness, under advice of counsel, declines to produce the contracts for the reason that they are not germane to any issue presented before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and the contracts with third parties, who are not parties to this proceeding and action, are private business and should not be made public and disclosed in this proceeding.'

* * * * * * *

"That during the hearing before the Interstate Commerce Commission there was under consideration the demand of the petitioner for the production by the Lehigh Valley Coal Company of certain coal-purchase contracts supposed to have been entered into by it with the certain miners and producers of anthracite coal whose operations were located on the line of the Lehigh Valley Railroad Company, whereupon a copy of one of said contracts was submitted to the consideration of the Commission for the purpose of determining their admissibility in evidence, and thereupon the chairman of the Commission announced, as appears on page 193 of the stenographer's notes of the said hearing, the following:—

"'THE CHAIRMAN:—During the recess the Commission has briefly examined the blank contract which was submitted to our inspection by the cour-

tesy of counsel. We understand from counsel that all the stock of the Lehigh Valley Coal Company, which is denominated the buyer in this contract, is owned by the Lehigh Valley Railroad Company, and it appears from an inspection of the contract that the prices paid to the seller are certain percentages of the prices for which coal is sold at tidewater terminals. If the balance retained is less than the amount paid the Railroad Company, the Coal Company sustains a loss in the transaction, which is hardly to be assumed. However this may be, the facts alleged to be contained in these contracts may properly be shown, we think, and we also think that the contracts are competent evidence of the fact. We therefore overrule the objection and allow the contracts to be put in evidence.'

"And this respondent alleges that in respect of the contracts which he has been called upon to produce, the said inferences so set forth in the opinion of the chairman of the Commission are unwarranted and unwarrantable, in fact only a small proportion of the coal sold by the Philadelphia and Reading Coal and Iron Company reaches tidewater terminals, and only a comparatively small proportion enters into Interstate Commerce; that in truth and in fact, owing to the divers markets to which this coal is consigned and the divers rates of freight to the said various markets, there remains to the Coal and Iron Company, on all its transactions for the purchase of coal, a large annual profit after paying full tariff rates to the railroad companies for transportation; that the inference of the Commission expressed in the words following: 'If the balance retained is less than the amount paid the Railroad Company, the Coal Company sustains a loss in the transaction,' could not apply to the contracts of any of said companies, unless all of the coal purchased was all shipped to a point where the transportation rate exceeded the balance remaining of the proceeds after paying sixty-

five *per centum* of the f. o. b. price to the seller under said contracts; and further, this respondent avers that as appears by the undisputed testimony of George F. Baer, Esq., hereinafter referred to, a large annual profit accrues to the said Philadelphia and Reading Coal and Iron Company from the sale of the coal purchased under said contracts after the payment of full regular tariff rates for transportation, notwithstanding the said inference of the said Commission in such opinion, and of said Shearn in said affidavits.

"This respondent is advised and believes, and therefore charges, that it is the uncontradicted purport and effect of the testimony of George F. Baer, Esq., the president of this respondent's company and of other corporations, who was called as a witness before the said Commission on behalf of the petitioner and complainant; that there is no foundation whatsoever in truth and in fact for the various allegations on which said subpœna *duces tecum* was issued; that neither in their inception, nor in their operation nor effect do the contracts which this respondent is called upon to produce, or either of them, in anywise relate to or bear upon any of the matters pending before the Commission under the said petition and complaint of said Hearst; that said contracts are not and will not be of service in the determination of said case; that they do not contain evidence material to the petitioner and complainant; that they are not in reality contracts fixing the rate of anthracite coal from the mines to destination, as is alleged by said Shearn in his said affidavit, but that they are in truth and in fact, as they purport to be, *bona fide* contracts made in Pennsylvania, solely for the uses and purposes therein mentioned; that neither in their inception nor in their performance have they any relation whatsoever to the subject of transportation; that the subject matter thereof is confined to the sales and delivery of anthracite coal produced within the Com-

monwealth of Pennsylvania to be delivered there, regardless of the ultimate market to which the coal may be shipped, and also regardless of the transportation charges thereon; that the said contracts do not purport, in any degree, to be dependent upon the rates of transportation, paid or to be paid; that in view of the character of said contracts, as shown by the said testimony of George F. Baer, Esq., they are wholly local and domestic contracts made and performable wholly within the State of Pennsylvania, and that therefore they in no wise bear upon or relate to commerce between the States or with foreign nations; that said contracts and the performance thereof are wholly of local cognizance and are without the jurisdiction of the Interstate Commerce Commission under the Act to Regulate Commerce, and are wholly without the jurisdiction of the Congress of the United States, and therefore may not lawfully be inquired into here. All of which will more fully and at large appear by reference to the stenographer's notes of the testimony of the said George F. Baer, Esq., before the Commission, a copy whereof is hereto attached and made part hereof, marked "Exhibit B." (Record, pages 120-209) And this respondent further shows that it is the general result of all the testimony so far adduced before the said Commission that the said contracts are of the character, purport, operation, and effect in this paragraph set forth and not otherwise.

"This respondent, for himself and his said company, further shows that he is ready and willing to appear before the Commission and to answer any question within his knowledge which the Commission may determine to be material bearing upon or relating to the relations of his said company as a shipper of interstate traffic with any of the respondent carriers in the proceeding pending before said Commission, and to produce any books, contracts, or other papers bearing upon or relating thereto, but this re-

spondent respectfully objects to and protests against any order herein which may be construed by the Commission to require him or any subordinate officer or agent of his company to appear and testify concerning the private dealings of his said company as a merchant either in respect of its mining, purchase, or sale of any commodity, for that the same are neither within the cognizance of the said Commission nor of the Congress of the United States."

* * * * * * *

The origin, history, purpose and effect of the coal sales contracts, are fully set forth in the testimony of George F. Baer. Record, pages 163-167, as follows:—

MR SHEARN:—Do you recollect having an interview with Mr. Carroll D. Wright, in November, 1902?

MR. BAER:—Yes, sir.

MR. SHEARN:—Did you say as follows, referring to the preceding strike, that,

"Shortly after this strike was inaugurated Senator Hanna met a number of gentlemen and insisted that if the strike were not settled it would extend to Ohio, Indiana, and Illinois, and the election of Mr. McKinley and Mr. Roosevelt would be endangered. He insisted that he was authorized to settle the strike through Mr. Mitchell, if the operators would agree to a ten per cent. advance in wages. After a great deal of pressure had been brought to bear upon the presidents of the coal companies and positive assurances were given that the situation was really dangerous, President McKinley, sending to me personally a gentleman to assure me that Ohio and Indiana were in danger unless some adjustment was made, we agreed to put up a notice which was prepared, as we understood, at Indianapolis and furnished by the United Mine Workers. The private operators absolutely refused to join in this advance, and instead of the strike being ended, as promised, it continued on for some time, and it became necessary, in order to relieve the situation, to call a meeting of the private operators with the presidents of the coal companies and to agree with them that if they

would put up notices to pay ten per cent. increase we would meet a committee which they should appoint and endeavor to increase, if possible, the price of coal. They agreed to this; a committee was appointed by private operators, and we sat two or three days a month for three months to reach an agreement with them. That agreement involved a heavy compensation to the private operators from the coal companies. The coal companies had agreed to change the basis of coal purchased from the private operators from a basis of forty per cent. and sixty per cent., to a basis of thirty-five per cent. and sixty-five per cent. In other words we had to decrease five per cent. and they increased five per cent."

You stated that to Mr. Wright?

MR. BAER:—I did, I assume; it sounds all right—if you have read it correctly.

MR. SHEARN:—That is the fact, is it not, anyway?

MR. BAER:—Yes, sir; it is the fact.

MR. SHEARN:—Now, the increase of price that you agreed to try to bring about between you was, I suppose, the price of coal to the independent mine owner, not to the price to the consumer? What price were you referring to that you would attempt to put up—the retail price of coal or the price to the operator?

MR. BAER:—It says exactly that it was to the independent operators who were selling their coal. Instead of selling it on the basis of sixty per cent. f. o. b. New York, they were to get sixty-five per cent.

MR. SHEARN:—So that referred, of course, to the price of their coal sold to your coal companies?

MR. BAER:—Yes, sir.

MR. SHEARN:—Where were those conferences held?

MR. BAER:—In Philadelphia.

MR. SHEARN:—Do you recollect who the committee representing the operators consisted of?

MR. BAER:—Why, Congressman Connell ——

MR. SHEARN:—Mr. Kemmerer was ——

MR. BAER:—Just wait until I get the whole thing back in my mind—Dr. Howe and Mr. Kemmerer. I think they were the only three.

MR. SHEARN:—You had several conferences at which they made representations to you and there was much discussion pro and con?

MR. BAER:—Oh, yes.

MR. SHEARN:—Was Mr. Truesdale present at the conference?

MR. BAER:—Well, at one or two he was, I think.

MR. SHEARN:—Was Mr. Garrett present?

MR. BAER:—Mr. Garrett was present at most of them.

MR. SHEARN:—Who else was present from the railroad companies or from the coal companies?

MR. BAER:—Why, Mr. Cumming.

MR. SHEARN:—Of the Erie?

MR. BAER:—Of the Erie—Mr. Cumming of the Erie, Mr. Garrett, and myself were the three there most of the time, and at times I recall Mr. Truesdale being there, once or twice.

MR. SHEARN:—You came to an agreement, didn't you?

MR. BAER:—Came to an agreement?

MR. SHEARN:—Yes, sir.

MR. BAER:—No; we did not come to an agreement. We suggested a plan to the coal companies and operators based upon the sixty-five per cent. contract and suggested—we outlined a plan and suggested that the companies on that basis, the coal companies, should make contracts with their private operators, or such of them as were willing to enter into contracts.

MR. SHEARN:—You had a draft form of agreement there, didn't you?

MR. BAER:—The form of agreement was revised and revised at every meeting.

MR. SHEARN:—And finally you and the committee came to a tentative agreement upon the contents of the proposed contract, didn't you, as stated in this report I have read to you?

MR. BAER:—An agreement was reached by the committee by we persons agreeing to recommend to the private operators and the coal companies the making of the contracts on this basis. There was no agreement about it. We had no power to make an agreement.

MR. SHEARN:—When you got through with your last conference the gentlemen representing the coal companies had come to an understanding as to what form of contract you were willing to enter into, had you not?

MR. BAER:—No; there was no agreement about it one way or another. The committee was acting representing all parties, and we recommended, as I recall it now, to the coal companies and to the individual operators the making of contracts on that basis. The form was a general form that would not suit all conditions, you see, and it was simply the basis of a contract in its general terms as to the sixty-five per cent. and as to the terms of payment, and the great fight we had, as I recall it, was on the proportion of coal and on the sizes of coal. Some of the private operators insisted upon changing the sizes of coal, and a good many of them wrote long letters to us insisting that what we called the inspection of the coal, by which the slate and the foreign matter is eliminated, was too rigid, and wanting an allowance of a larger percentage of slate—details of that kind.

MR. SHEARN:—The essential thing that was under consideration was the increase of the price from sixty to sixty-five per cent. of the tidewater price on prepared sizes?

MR. BAER:—You may say that was the essential, that the price is the essential thing, but the real essential thing in fixing that basis was to have the contract clearly define the character of the coal. Anthracite coal can be mined so full of foreign matter and slate that its merchantable quality very much depreciates, and the standard we had established as the basis of purchase was the source of long and protracted talk; it took up five times as much time as anything else, as you will see by the details in the contract. The object of the coal companies being the purchasing company, was to get clean, merchantable coal and also to get a clear definition of the sizes of coal.

MR. SHEARN:—And the object of the operator was to get an increased price?

MR. BAER:—To get the increased price and have as

low an inspection as possible, which affected the quality of the coal.

MR. SHEARN:—Bebore these conferences had terminated you gentlemen representing the railroads had ——

MR. BAER:—Not representing the railroads.

MR. SHEARN:—Representing the coal companies had come to the conclusion that you were willing to pay sixty-five per cent. of the tidewater price?

MR. BAER:—Yes, sir.

MR. SHEARN:—And you so announced that to the committee, did you not?

MR. BAER:—Yes, sir.

MR. SHEARN:—Does that sixty-five per cent. mean sixty-five per cent. of the price of each man's coal at tidewater, or sixty-five per cent. of the general price of all coal, of the same grade, sold during a given month at tidewater?

MR. BAER:—I will have to refer you to the contract. I really cannot carry those details in my mind. There is a specific provision in the contract relating to that, I am sure, but I cannot recall it from recollection.

COMMISSIONER PROUTY:—Do you know, as a matter of fact, how that is got at?

MR. BAER:—My recollection of that is this: That the f. o. b. price of white ash coal—you see there are so many kinds of coal that we have to take a standard coal. It is taken in New York, the f. o. b. price in New York, and all the coal of that particular region, the white ash coal, is taken to make the common basis of payment. For example, the Schuylkill region, or the shippers from the Schuylkill region, bring white ash f. o. b. New York. That has to be the basis of payment, say in the Wyoming region, of what other coals bring. These coals all differ in quality.

COMMISSIONER PROUTY:—You put all on the same basis of the same quality of coal?

MR. BAER:—Yes, sir; to get at a common basis for the same quality coal and that is done by a statistician, Mr. Ruley, who gets the prices, and the operators have a right

to call on the coal companies to send in a statement of the prices at which they have sold all this coal, and then he makes up a statement and ascertains the average price. We never look beyond that. We think he is perfectly competent.

COMMISSIONER PROUTY:—You say the coal companies send to him a detailed statement of coal and the prices on what they have sold?

MR. BAER:—Yes, sir.

MR. SHEARN:—The various coal companies employ Mr. Ruley to get these figures up for them?

MR. BAER:—Mr. Ruley is a statistician and gets up all kinds of figures for us in relation to the coal trade. We report to him everything about the business, where we sell the coal, and all that, so that he prepares for us statements—how much coal has been sold in Brooklyn, and who sold it, and what prices it brought, and he gives monthly statements—statements of how much coal each of the companies transported to market.

THE CHAIRMAN:—And how much each one sold of a given grade?

MR. BAER:—Yes, sir; all different grades.

THE CHAIRMAN:—Is that the basis on which the settlement is made?

MR. BAER:—No; the payment is made on domestic—there are different kinds. Sixty-five per cent. is not the whole of the story. That is on domestic sizes.

MR. SHEARN:—Prepared sizes?

MR. BAER:—The other sizes call for a different payment, which I do not remember; that differs. The contracts are not uniform on that.

MR. SHEARN:—But as to the sixty-five per cent. payment?

MR. BAER:—As to the sixty-five per cent., on what we call prepared sizes; I think the contracts are uniform on that; but they are not as to the smaller sizes of coal.

MR. SHEARN:—We are speaking of prepared sizes. I should come to the conclusion, from what you have said, that the statement is made for prepared sizes on sixty-

five per cent. of the general average price prevailing during the month on the sales made; not sixty-five per cent. of the price that each individual operator's coal is actually sold for.

MR. BAER:—The general market price for that particular kind of coal at a particular market, as I recollect it.

MR. SHEARN:—You are unable to differentiate between the individual miner's coal and your own coal? It all goes into a common supply, does it not, and is sold?

MR. BAER:—That is the reason of it. The advantage we have, the great advantage to us, is that we can take the coal from all these private operators and have it consigned with our coal. It saves us a great deal of cost and trouble in keeping the coal separate and selling on each man's account. It becomes a part of our coal that we purchase and we give him the average price we obtain for the coal.

THE CHAIRMAN:—That seems to dispose of the question, Mr. Shearn.

* * * * * * *

Record, page 196:—

MR. SHEARN:—The rate of freight on anthracite coal is a mere name. It does not mean anything, does it, under your method of operation? The rate you get for transporting anthracite coal for the Reading Coal and Iron Company is based entirely on what the Reading Coal and Iron Company has left after it pays for the mining of the coal and the selling of the coal?

MR. BAER:—You are greatly mistaken. The Reading Coal and Iron Company pays its freight on all the coal it transports, either directly or indirectly, through the consumer; that is to say, when we sell coal in New York we sell it f. o. b., and the Coal and Iron Company has to pay the freight to the railroads. If we sell it from the mine the freight follows the cargo, you understand, and the purchaser, the consignee, pays it there; but in every instance the Coal and Iron Company or the consignee of the Coal and Iron Company, pay full rates. There are no rebates given the Coal and Iron Company,

even on this purchased coal. Argument was made—and I will state it on the basis of a thirty-five per cent. contract. Out of that thirty-five per cent. the Coal and Iron Company is able to pay the full freight rate and to pay all the costs of handling its coal—I mean of selling it—to deduct all the risks and still make a profit.

MR. SHEARN:—How does it do it?

MR. BAER:—How do they do it?

MR. SHEARN:—Yes, sir. Coal is only $4. There is only $1.40 left.

MR. BAER:—That is the error you make again in assuming that New York is the world. At New York you sell a small quantity of coal at $4, but at other places the freight rate is much lower and the price much higher. Now, the rate in New York, the f. o. b. price, fixes the price for all the coal, and in every month of the year we make a profit on the coal we purchase. Of course, if the Coal and Iron Company sold all its coal in New York, instead of only its surplus there, at $4 it could not pay the railroad its freight rate; but suppose you have ninety per cent. of the colliery capacity, which you sell at a large profit, and the other ten per cent. you have to sell in New York below the current price, say $4, then the Coal and Iron Company would have only $1.40 with which to pay freight, but in some other places, locally, it will get a much greater profit; that thirty-five per cent. will be much more to them, and therefore it is the Coal and Iron Company is able to pay full freights and still make money.

MR. SHEARN:—You make the other localities pay the higher rate of freight to New York, then?

MR. BAER:—New York is favored because it is competitive. There is no question about that.

MR. SHEARN:—I say you make the other communities pay the high rate of freight to New York. The difference is made up out of the other communities, then. Is that correct?

MR. BAER:—Not necessarily correct. You can readily see if coal is sold along the line, the charge of the railroad,

the rate of freight is small; the distance is small, and the Coal and Iron Company will make a profit on their coal. In a general way, in answer to your question, I will say that New York is the favored spot for long-haul anthracite coal; that you get your coal because of a lower freight rate proportionately and because of competitive conditions here at a lower price than they do in any other place. That is to your advantage. It is the natural advantage of location to which every community is entitled.

MR. SHEARN:—Well, then, when the return to the railroad company on coal shipped to New York is only $1.25 a ton, representing a loss of about twenty-five cents a ton to the Coal and Iron Company, you make that up in an extra charge of freight to some other locality, like Philadelphia, Baltimore, or Washington?

MR. BAER:—We do not. We have regular lines of freight. The freight has nothing to do with it. The Coal and Iron Company buys so many tons of coal, say a thousand tons of coal. It may sell nine hundred tons of that coal at a large profit. It may have a surplus of one hundred tons, which it sells at a loss; but taking the whole transaction, it makes a profit on the thousand tons, and is able, therefore, to pay the full freight rate to the transportation point. That is the whole story.

MR. SHEARN:—Then it does not take out of the proceeds of the sale of coal at New York the funds for the payment of freight to the railway company, but where they are insufficient it reaches out and takes part of the proceeds of the sale of coal in other communities along the line—at Philadelphia, Baltimore, Washington, or Boston?

MR. BAER:—It buys the coal of the colliery. It must take all that coal. At the end of the month it sees what has been the commercial result of that purchase. It finds as the commercial result on all the coal that it has made a profit—on all of it together—by which it is able to pay the freight and have a considerable sum in its treasury for itself to represent the reasonable profit it makes as a factor in selling the coal. Now, I can readily under-

stand if, in point of fact, these transactions resulted in a loss to the Coal and Iron Company that that might amount to a rebate, which would be unlawful, but in point of fact they do not. That is one of the things I think you have a right to inquire into. I am speaking positively, because I have the statement carefully made up, covering the period of time when these contracts began, because I was about to enter into a new contract, the first one I believe I had made under my administration, and before making it—I have not made it yet—before I went into it, I wanted to be certain that the commercial feature of it was satisfactory, and I directed the accounting officers to make up a careful statement by the month of the result to the Coal and Iron Company of these purchase contracts, and I find that the comparatively small number we have—there are only about a million tons—that we made a profit after paying full freights to the railroad company since November 1st, 1901, of over $300,000, and there was a profit every month; $300,000 was after paying full freights and after taking out a reasonable share of the general expense of selling coal.

As to the Case of George F. Baer, a Witness and Appellee.

To the rule granted by the Circuit Court, this witness answered that he was President of the Temple Iron Company, a corporation of Pennsylvania; that the proceedings before the Interstate Commission took place as set forth in the petition, wherein he "as an officer of the Temple Iron Company on the advice of Counsel declined to produce, or direct the production of certain agreements called for by claimants' Counsel, dated February 27, 1899, * * * and that this respondent then and there waived all questions as to the service of the writ of subpœna *duces tecum;* or to the said papers not being then in his actual custody, and all other technical questions of the same nature." (Record, pages 62-63.)

The answer then proceeds (Record, page 63):—

"This respondent, on behalf of the Temple Iron Company, of which he is president, now here produces and files for the information of this court copies of all the said agreements (Record, pages 78-93), and thereupon in his own behalf, on behalf of the Temple Iron Company, whose officer he is and whose papers they are, as well as on behalf of the Guaranty Trust Company of New York, the confidential custodian of the same, objects to and protests against the production of the said documents before the said Commission at the said hearing, for the reason that they appear on their face to be only and solely papers and documents of private parties, not parties to the proceedings before the Commission; that they related solely to the purchase of properties within the State of Pennsylvania, and to the securing the payment of the purchase money therefor; that both on their face and by the testimony before the Commission they are affirmatively shown not to bear upon or relate to commerce between States, nor any other subject within the cognizance of said Commission, nor to bear upon or relate to the relation of his company as a shipper of interstate traffic with any of the respective carriers in the proceeding pending before the said Commission; that the said contracts, and the performance thereof, are wholly matters of local cognizance and are without the jurisdiction of the Interstate Commerce Commission and the act to regulate commerce, and are wholly without the jurisdiction of the Congress of the United States, and, therefore, may not be lawfully inquired into by the said Commission. In support of which said allegations this respondent refers to and makes part of his answer herein a copy of the stenographer's notes of his testimony, a copy whereof is attached to and made part of the answer of William G. Brown, secretary of The Philadelphia and Reading Coal and Iron Company, filed herein

as an exhibit. (Record, pages 120-209.) And this respondent further shows that it is the general result of all the testimony so far adduced before the said Commission that the said contracts are of the character, purport, operation, and effect in this paragraph set forth and not otherwise.

"This respondent, for himself and his said company, further shows that the said corporation is not a shipper of coal or any other commodity over any of the lines of the respective companies; that he and his subordinate officials and agents are ready and willing to appear before the Commission and to answer any question within their knowledge which the Commission may determine to be material, bearing upon or relating to the relations of the said company as a shipper of interstate traffic with any of the respondent carriers in the proceeding pending before the Commission and to produce any books, contracts, or other papers bearing upon or relating thereto, but this respondent respectfully objects to and protests against any order herein which may be construed by the Commission to require him or any subordinate officer or any agent of his company or the said Guaranty Trust Company of New York, the confidential depository of said papers, to appear and testify concerning the private dealings of his said company either in the purchase of mines or stocks and interests therein, located within the Commonwealth of Pennsylvania, or any of the private dealings of his said company as a merchant either in respect of its mining, purchase, or sale of mines and stocks or of any commodity, for that the said several subjects are neither within the cognizance of the said Commission nor of the Congress of the United States." * * *

Having made profert of these various agreements, copies were filed with the answers, and appear in the Record, pages 77 to 93, and consist of a series of contracts dated February 27th, 1899.

I. Between Simpson & Watkins, at Scranton, Pa., vendors, and the Temple Iron Company, a corporation of Pennsylvania, the purchaser. (Record, page 78.)

The subject matter of this contract is shown in the first article:—

> "1. By these presents the vendors assign, set over, and transfer to the Temple Iron Company all of the capital stock, assets, and property, free of all debts, liens, and liabilities of every kind (except as hereinafter stated) of the following corporations:—
>
> "'(*a.*) The Forty Fort Coal Company;
> "'(*b.*) The Mount Lookout Coal Company;
> "'(*c.*) The Wyoming Land Company;
> "'(*d.*) The Wyoming Electric Light Company;
> "'(*e.*) The Babylon Coal Company;
> "'(*f.*) The Sterrick Creek Coal Company;
> "'(*g.*) The Edgerton Coal Company;
> "'(*h.*) The Hendrick Land Company;
> "'(*i.*) The Northwest Coal Company;
> "'(*j.*) The shares of the Lackawanna Coal Company, a limited copartnership of Pennsylvania.'"

The consideration to be paid is shown in the second article, which provides that (Record, page 79):—

> "* * * The Company will issue and deliver to the vendors, or upon their order, proper certificates for $2,260,000 of the full-paid capital stock of the company, and the bonds of the company for the aggregate principal sum of $3,500,000, bearing interest at the rate of four per cent. per annum, payable semi-annually at the office or agency of the company in the city of New York, and the principal payable on the first day of January, 1925, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness. * * *

The mortgage or collateral trust deeds securing such bonds shall provide for a possible issue of such bonds for an aggregate sum not exceeding $15,000,000 (of which $11,500,000 are to be reserved for the acquisition of other property), and shall contain proper provision for a sinking fund for the acquisition of such bonds, to be held for the purposes of said sinking fund at not over one hundred and ten per cent. and accrued interest. The terms of such bonds and of the indentures securing the same shall be determined by the parties hereto, or, in case of their inability to agree, by the Guaranty Trust Company of New York.

II. Between Simpson & Watkins, the above-named vendors, of the first part, and the Guaranty Trust Company of New York, a corporation of the State of New York, of the second part, reciting the foregoing agreement for the sale of the property therein mentioned, and providing for the deposit of the stock and bonds of the Temple Iron Company simultaneously with their receipt, the trust company to hold the same with power of sale and disposition in consideration of payment to the vendors of the sum of $3,238,396.66 and certificates of beneficial interest of the character therein provided in respect of $1,000,000 of such capital stock.

III. An agreement of the same date between the Temple Iron Company, Guaranty Trust Company of New York, and each of the several railway companies below named (Record, page 82), reciting the issue of stocks and bonds of the Temple Iron Company and the terms thereof, and reciting further as follows:—

"WHEREAS in the accomplishment of its said purposes the Iron Company desires that the Railway Company shall extend its lawful aid by the purchase of capital stock and bonds of the Iron Company, or of either of them, or by guarantee of or by an agreement

to purchase the principal and interest, or both or either, of bonds of the Iron Company; and

"WHEREAS the Trustee, being owner of the greater part of the capital stock and of the bonds of the Iron Company, desires that the credit and resources of the Iron Company shall be strengthened and increased, and that the value of its shares of capital stock and bonds shall be increased by the means and in the manner hereinafter provided, and consequently is willing to make sale of the shares of the Iron Company to the extent, in the manner and at the times hereinafter specified; and

"WHEREAS the Railway Company is engaged or interested in the business of transporting the materials for, or the products of, the Iron Company, or the iron or coal from its mines, and is directly interested in the development of the business of the Iron Company, so as to maintain a permanent supply of coal and so as to obtain and to secure a fair proportion of the traffic from and to the works and mines of the Iron Company; and

"WHEREAS under the general laws of Pennsylvania, as well as by the particular laws under which it operates, the Railway Company has lawful authority for the purposes above indicated, to acquire and to hold the stocks and bonds of the Iron Company, and as a condition of such acquisition to guarantee the payment of the principal and interest of the bonds of the Iron Company."

The agreement then proceeds to make detailed provisions for the practical and substantial guaranty of the payment of the interest upon the series of bonds and dividends upon the stock issued by the Temple Iron Company in payment for the property purchased from Simpson & Watkins, or for their purchase within a given period, at the option of the trustee. This railway agreement, a blank copy being printed in the record (page 82), is shown by the record to have been signed by the Temple Iron Company, Guar-

antee Trust Company of New York, and otherwise as follows:—

Three counterparts by Lehigh Valley Railroad Company (a corporation of Pennsylvania), by Alfred Waters, president, and attested by John R. Fanshawe, secretary, for 22 88/100 per cent.

Three counterparts by Central Railroad Company of New Jersey (a corporation of New Jersey), by J. R. Maxwell, president, and attested by Samuel Knox, secretary, for 17 12/100 per cent.

Three counterparts by Delaware, Lackawanna and Western Railroad Company (a corporation of Pennsylvania), by Samuel Sloan, president, and attested by Fred. F. Chambers, secretary, for 19 52/100 per cent.

Three counterparts by Erie Railroad Company (a corporation of New York), by E. B. Thomas, president, and attested by J. A. Middleton, secretary, for 5 84/100 per cent.

Three counterparts by New York, Susquehanna and Western Railroad Company (a corporation of New Jersey, Pennsylvania), by E. B. Thomas, president, and attested by J. A. Middleton, secretary, for 4 68/100 per cent. (Record, pages 86-86.)

IV. Between the Temple Iron Company, Guaranty Trust Company of New York, Trustee, and Reading Company, a corporation of Pennsylvania, substantially the same in form and substance as the foregoing, save in respect of the percentage of responsibility which is fixed at 29.96. (Record, page 87.)

V. Between the Guaranty Trust Company and the certain individuals named therein, collectively called the syndicate, for the purchase of $2,100,000 of the bonds owned by the Temple Iron Company in part payment to Simpson & Watkins for the property purchased from them, and $1,500,000 of an issue of certificates of interest on the like amount, the capital stock of the Temple Iron Company, deposited with the trustee under the preceding agreement.

The syndicate subscribers to take severally the proportion set opposite their respective signatures. (Record, page 91.)

The Order of the Circuit Court.

June 12th, 1903. The opinion of the Court (Lacombe, C. J.,) was filed (Record, page 832), in which it was said:—

> "There are several witnesses proceeded against, although for convenience their cases have been heard together on a single petition. Separate orders, however, should be made in each case, for each case is a separate proceeding instituted in this court against the particular individual."

In respect of the coal purchase contracts the opinion proceeds (Record, page 833):—

> "The contract, or at least one of the contracts asked for, has been produced and submitted to the court, and it does not provide, as indicated in the petition, that the 'prices paid to the seller are certain percentages of the prices for which the coal is sold at tidewater terminals.' It is entirely a contract of purchase, and does not deal at all with the subject of transportation. It fixes the price which the Lehigh Valley Coal Company is to pay the seller for coal at a certain percentage of the price at which coal of the same quality and size shall be sold during the month at a specified place. It is in no way different from a contract for the purchase of a specified number of tons of coal at a specified sum in dollars and cents, a contract made in the State of Pennsylvania, and to be completed therein by the delivery of the coal at the breakers.
>
> "Whether the Lehigh Valley Coal Company is to be considered as an independent corporation, or whether in the transaction it is to be taken as the *alter ego* of the railroad company, and the coal bought under the contract to be treated as the coal of

the railroad company, this particular contract is not relevant to the questions of reasonable rates, discriminations, &c., which were presented by the complaint.

The petition to direct the production of this contract is therefore denied.

* * * * * * *

VI.

"In the case of William G. Brown, secretary of the Philadelphia & Reading Coal and Iron Company, the motion to produce the contract is denied for the reasons given above."

* * * * * * *

VIII.

"In the case of Edgar C. Hebbard, secretary of the Guaranty Trust Company of New York, an order is asked requiring the production of several contracts referred to in the petition upon the argument as the Temple Iron Company contracts. It appears that heretofore certain coal operators and coal companies which were not owned or controlled by the defendants, being dissatisfied with the freight rates or with the manner in which the business of transportation was being conducted, came together for the purpose of building or securing the building of a new road from the coal regions where their mines were located to tide water. The defendants being unwilling to meet competition which such a new road would introduce, combined together and bought up the collieries of those who were promoting the new road. Thereupon the project of building such competing road was abandoned. The contracts in question are parts of the machinery by which this combination prevented the building of the new road. If the defendants were being prosecuted under the Sherman anti-trust Act for having entered into a combination, agreement, or

contract in restraint of trade, the contracts in question would be relevant testimony. This, however, is not a prosecution under the anti-trust Act, nor is the Interstate Commerce Commission the forum before whom such a prosecution is conducted. The contracts seem to be irrelevant to the proceeding under this complaint and the motion to require their production is denied.

IX.

"In the case of the witness, George F. Baer, the motion to require him to produce the Temple Iron Company contracts is denied."

* * * * * * *

Notwithstanding the expression in the opinion of the court to the effect that separate orders should be made in each case, "for each case is a separate proceeding instituted in this court against the particular individual," the final entry (Record, pages 836-837) is in joint consolidated form as though the appellees were joint respondents in a joint proceeding. But one joint appeal is taken and allowed. (Record, page 836.)

A joint citation was served (Record, page 842) omitting, however, E. C. Hebbard, one of the parties named in the joint order, who was not served, although the assignments of error include his case. (Record, page 840.)

I. BRIEF OF ARGUMENT.

The authority under the laws of Pennsylvania of the carrying companies who are the respondents in the proceedings before the Interstate Commerce Commission, to engage in mining or manufacturing products which may become the subject of transportation over their lines, or to hold and control the share capital of other corporations so engaged has been incidentally challenged at various points in these proceedings, and in anticipation of

a similar challenge here, the following is respecfully submitted.

As to some of these respondents, not however represented by the undersigned, their powers are derived from specific provisions of their charters, as well as from general legislation.

As to others the power is derived from various special charters and from the general law.

The following extract from the special charter of the Philadelphia and Reading Coal and Iron Company (Act of 18th June, 1871, Record, pages 117-118, Pamphlet Laws, 1871, page 915) illustrates the propositions:—

* * * * * * *

> "SEC. 5. * * * and it shall be lawful for the president and directors of said company to subscribe for and purchase the lands or stock of any other incorporated company in the State of Pennsylvania, or for any railroad or mining company of this State existing under the laws of this State to subscribe for or purchase the stock, or to purchase or guarantee the bonds of the company hereby incorporated." * * *

The general Act of April 15th, 1869 (P. L., 186) page 31, Record, page 71), is as follows:—

> "An Act to authorize railroad and canal companies to aid in the development of the coal, iron, lumber, and other material interests of this Commonwealth.
>
> "SEC. 1. *Be it enacted, &c.* That it shall and may be lawful for any railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber, and other material interests of this Commonwealth, by the purchase of their capital stock and bonds, or either of them, or by the guarantee of or agreement to purchase the principal and interest or either of such bonds: *Provided*, That this Act shall not apply to the stock and bonds of any corporation possessing mining or manufacturing privileges in the county of Schuylkill.
>
> "Approved 15th April, 1869."

Extract from charter of Reading Company:—

(Act 7th April, 1870, P. L., 1870, page 1025. Record, page 71.)

> "SEC. 3. The company hereby created shall also have the power to make purchases and sales of or investments in the bonds and securities of other companies, and to make advances of money and of credit to other companies, and to aid in like manner contractors and manufacturers, and to receive and hold, on deposit or as collateral, or otherwise, any estate or property, real or personal, including the notes, obligations, and accounts of individuals and companies, and the same to purchase, collect, adjust, and settle, and also to pledge, sell, and dispose thereof, on such terms as may be agreed on between them and the parties contracting with them; and also to endorse and guarantee the payment of the bonds and the performance of the obligations of other corporations, firms, and individuals, and to assume, become responsible for, execute, and carry out any contracts, leases, or subleases made by any company to or with any other company or companies, individuals, or firms whatsoever."

Counsel for the complainant, Hearst, and for the Interstate Commerce Commission in the Circuit Court have adverted to the supposed prohibitions contained in Section 5, article XVII, of the new Constitution of Pennsylvania, which took effect January 1st, 1874, as in some way impairing the powers vested in the companies by the previous legislation above quoted.

The constitutional provision is:—

> "ARTICLE XVII.
>
> "SEC. 5. No incorporated company, doing the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works, nor shall such company, directly or indirectly, engage in any other

business than that of common carrier, or hold or acquire lands, feehold or leasehold, directly or indirectly, except as shall be necessary for carrying on its business." &c.

Purd, Dig. 12 ed. Kay and Brother, Philada., 1895, Vol. I., page 49, pl. 202.

The legislation above quoted and the charters of the various companies, as well as the acquisition by the railroad companies of the stock control of the coal companies, all antedated the new Constitution, and therefore the relations were not devised to evade or avoid the prohibitions of the Constitution made subsequently.

The decision of the Supreme Court of Pennsylvania in the case of Commonwealth vs. New York, Lake Erie and Western Railroad Company, 132, *Penna. State Reports*, 591, is regarded in that State as an authoritative declaration that ownership of the stock of coal companies under the Act of 1869, or by virtue of the special provisions of the charters themselves, cannot be treated as an evasion of the prohibition, and that consequently the acts and doings of the coal companies in the conduct of their dealings and business cannot be justly regarded as the acts of the railroad companies. The case arose under the Act of April 26th, 1855, which provides that "No corporation * * * shall hereafter acquire and hold any real estate within this Commonwealth directly in the corporate name, or by or through any trustee or any device whatsoever, unless specially authorized to hold such property by the laws of this Commonwealth, and further provided for an escheat of lands held in violation thereof." A proceeding by *quo warranto* was taken by the Commonwealth to escheat certain lands belonging to the Northwestern Mining and Exchange Company, under this Act, on the ground that inasmuch as the New York, Lake Erie and Western Railroad Company was the real owner of these lands (their ownership by the mining company being, as alleged, a mere device), and, as the railroad company was without authority to hold such lands, they were subject to escheat.

The Supreme Court held, however that as the statutes of the State authorized the holding of the stock of the mining company by the New York, Lake Erie and Western Railroad Company, such holding could not be regarded as a device to evade the provisions of the Act of 1855, and that the holding of the shares was specifically authorized by law.

It will be noted that the prohibition of this Act of 1855 is similar in substance and terms to one of the prohibitions contained in the 5th section of the 17th Article of the new Constitution.

Speaking to this point, the Supreme Court said:—

> "The object of this legislation is obvious. It was to authorize railroad and canal companies to employ their capital and credit to aid in the development of the mineral resources of the Commonwealth. Such development, as every one knows, is in many instances beyond the reach of individual enterprise. It was easy enough to form corporations with all the requisite powers for this purpose. It was a very different thing to find capitalists to take their stocks and bonds. Hence it was that the legislature gave to railroad and canal companies the power to purchase both stocks and bonds of such companies. Nor was any limitation placed upon this power. They might buy a portion or all of the stock. It probably never occurred to the legislative mind, while the purchase of a portion of the stock of a mining company would be aiding such corporation to develop the mineral resources of the State, the purchase of a majority of or the whole of the stock of such company might be held to be a 'device' to evade the Act of 1855. However that may be, the Act of 1869 was evidently intended to legalize, and perhaps encourage, railroad and canal companies to invest in this species of mining companies. It involved, necessarily, the control of such companies by the corporations making such invest-

ments, to the extent of the stock held by them. A majority of the stock controls the corporation; the corporation controls the land held by it. In this sense, and to this extent, the Act of 1869 enabled the railroad companies to control real estate, the title to which they were forbidden to hold directly or indirectly by the Act of 1855. It must not be forgotten, however, that controlling real estate, by means of the ownership of a majority of the stock of such corporation, is a very different matter from holding the title to such real estate. The one is legalized by the Act of 1869; the other is forbidden by the Act of 1855."

And in numerous cases, since the adoption of the new constitution, the Supreme Court of Pennsylvania has held that the constitution of 1874 did not *ipso facto* repeal charters, nor impair pre-existing rights and contracts.

"Charters of private corporations are left precisely as the new constitution found them, and so they must remain until the companies holding them shall enter into a new contract with the State by accepting the benefit of some future legislation."

Hays *vs.* Commonwealth, 82 *Pa. State*, 524.

In Penna R. R. Co. *vs.* Duncan, 111 *Pa. State*, 352, affirming Hays *vs.* Commonwealth, it is said "We also agree that the framers of the constitution of 1874, did not intend to violate the laws of the federal government, or to repeal the provisions of any charter granted by the Legislature of Pennsylvania."

"But the constitutional convention claimed for itself no such power, on the other hand it has expressly set down in (Sec. 2 of the Schedule) that all *rights*, actions, prosecutions and *contracts* shall continue as if the constitution had not been adopted. And * * * it is manifest that the convention did not intend to subject any private corporation to any of the provisions of the consti-

tution which might in any degree change the charter thereof."

Gloninger *vs.* Railroad Co., 139 Pa. State, 31.

See also—

Ahl *vs.* Rhoads, 84 Pa. State, 324;
Williamsport Pass. Ry. Co. *vs.* Williamsport, 120 Pa. State, 1, 11.

II.

The only question considered and determined by the Circuit Court was whether the testimony, oral and documentary, which the complainant sought, and the witnesses declined to supply, is relevant or material to any issue or matter lawfully before the Commission, and the Court determined they were not.

At this point these appellees desire to press upon the attention of the Court the obvious fact that, whatever might have been the situation at the beginning of their inquiry, when the questions were first raised before the Commission, the subsequent proceedings have made the questions purely academic, and of no practical importance in the determination of the case pending before the Commission.

The record shows that the Commission opened the hearing in New York April 21st, 1903, Record, page 229, and within two days, including the proceedings on the 23d, the question had been raised in respect of the documents in question, and their production had been refused.

The record shows that during the entire proceedings sample copies of all these documents were in the possession of the counsel for the complainant, and that a sample copy of one of the purchase contracts had been exhibited to the Commission.

The proceedings continued, including adjournments, as the record shows, until June 11th, a period of nearly two months, during which by the oral testimony of

various witnesses, notably that of Mr. Baer, amply quoted in the foregoing statement, the origin, history, purport, and substantial operation and effect of the coal purchase contracts, as well as of the Temple Iron Company agreements, were sufficiently shown for all practical purposes; so that if the Commission should proceed to the determination of the complaint before them, there is no matter of substance they could possibly derive from the inspection of the original papers that is not sufficiently before them in the oral testimony of the witnesses.

III.

The ground upon which the Commission and counsel mainly rely in support of their demand for the production of the coal purchase contracts seems to be that while in form they are contracts for the purchase and sale of coal, they have the practical effect of fixing or affecting the rates for transportation to be paid by the purchaser.

The chairman, in announcing the ruling on the admissibility of the first contract called for, remarked:—

> "It appears from an inspection of the contract that the prices paid by the seller are certain prices for which coal is sold at tidewater terminals. If the balance retained is less than the amounts paid the railroad company, the coal company sustains a loss in the transaction, which is hardly to be assumed. However that may be, the facts alleged to be contained in the contracts may properly be shown, we think, and we also think the contracts are competent evidence of the fact." (Record, page 298.)

The answers of the witnesses filed, under oath, in the Circuit Court, utterly refute the inference upon which the ruling is based, and the answers are abundantly supported by the testimony.

In the answer of Brown (quoted in the foregoing statement of the case, *supra*, page 8), it is said:—

"The said inferences so set forth in the opinion of the chairman of the Commission are unwarranted and unwarrantable; in fact, only a small proportion of the coal sold by the Philadelphia and Reading Coal and Iron Company reaches tidewater terminals, and only a small proportion enters into interstate commerce; that, in truth and in fact, owing to divers markets to which this coal is consigned, and the divers rates of freight to said various markets, there remains to the Coal and Iron Company, on all its transactions of the purchase of coal a large annual profit after paying full tariff rates to the railroad companies for transportation."

The testimony of Mr. Baer, above quoted, amply confirms the averments of these answers. He says (pages 19 and 20, *supra*):—

"MR. BAER:—It buys the coal at the colliery. It must take all that coal. At the end of the month it sees what has been the commercial result of that purchase. It finds as the commercial result on all the coal that it has made a profit—on all of it together—by which it is able to pay the freight and have a considerable sum in its treasury for itself to represent the reasonable profit it makes as a factor in selling coal. Now, I can readily understand if, in point of fact, these transactions resulted in a loss to the Coal and Iron Company that that might amount to a rebate which would be unlawful, but in point of fact they do not. That is one of the things you have a right to inquire into. I am speaking positively, because I have the statement carefully made up, covering the period of time when these contracts began, because I was about to enter into a new contract, the first one, I believe, I had made during my administration, and before making it—I have not made it yet—before I went into it, I wanted to be certain that the commercial feature of it was satisfactory, and I directed the accounting

officers to make up a careful statement by the month of the result to the Coal and Iron Company; and I find that the comparatively small number we have—there are only about a million tons—that we made a profit after paying full freights to the railroad companies since November 1st, 1901, of over $300,000, and there was a profit every month; $300,000 was after paying full freights and after taking out a reasonable share of the general expense of selling coal."

This statement is corroborated by the testimony of other witnesses, and is nowhere contradicted in this record, save by the argumentative deductions of counsel.

The contracts themselves show on their faces that they are confined to the sales of coal at the mines, regardless of the ultimate market to which the coal may be shipped, and regardless of the transportation charges thereon, and do not purport, in any degree, to be dependent upon the rates for transportation.

Such was the conclusion of the Circuit Court which said:—

> "It is entirely a contract of purchase, and does not deal at all with the subject of transportation" * * * "a contract made in Pennsylvania to be completed there."

If, then, the contracts do not tend to establish the rates of freight paid on coal delivered thereunder, it is clear they are not admissible in evidence on the question of rates, and have no materiality or relevancy whatever to the allegation of the complainant's attorneys that the railroad companies exact or receive less on this coal than their published rates, or that the latter are either unreasonable or discriminating. If the latter assertion was in any degree well founded in fact, the fact itself is readily susceptible to proof in the usual and orderly way by referring to the officials and books of either the carriers or shippers to show what was actually paid, hence this indirect method of approaching the subject is utterly unnecessary. The

carriers are under the supervision of the Commission as to all interstate traffic and so also are the shippers and consignees, their books, papers and accounts; from these can be obtained directly all the data required on every question raised by the complaint, whereas the contracts in question neither show the price of the coal nor the rates for transportation, nor any other fact, save that the sellers have sold the product of their mines for prices to be determined by external and comparatively remote conditions of future markets, which is utterly irrelevant, and tends to prove nothing on any point at issue.

IV.

It was contended before the Commission and before the Circuit Court that the contracts sought to be given in evidence relating to the arrangements entered into by certain of the companies, as to the purchase of the stock and the guaranty of the interest on the bonds of the Temple Iron Company were admissible, upon the theory that they tended to establish the charge against the defendant of a combination to pool freights or freight traffic in anthracite coal. It is claimed that the contracts embraced certain agreements between certain of the railroads which led to the increase of the bonds and stock of the Temple Iron Company, the contracts for their purchase and guaranty by the parties to the agreements and the use of the funds thus provided by the Temple Iron Company to purchase the control of certain mining companies, whose owners were then engaged in an effort to promote the construction of a line of railroad which if built would have diverted from the parties the coal tonnage or traffic then carried by them.

It will be observed that the purchases and guaranties provided for and consummated by these agreements were authorized by the laws of Pennsylvania, quoted above.

It cannot be pretended that by the contracts in question, any pooling of freights was directly provided for or accomplished, for the disposition of the traffic is nowhere alluded to in any of these papers.

But it was contended that the output of the companies whose control was thus acquired by the Temple Iron Company, was by some understanding to be shipped by the producing companies in some definite proportions over the lines of the railroad companies, and that this amounted to a pooling of freights by the railroad companies because these companies control the Temple Iron Company.

The evidence shows that neither the Temple Iron Company nor the companies of which it purchased the stock are shippers of coal at all. It is shown that all the coal produced by these mining companies is sold at the mines under purchase contracts similar to those which are fully discussed above.

The pooling prohibited by the "Act to Regulate Commerce" must be an agreement of carriers under which either traffic delivered for transportation to one carrier is turned over to another, in performance of an agreement to divide tonnage in agreed proportions, or, the division of the joint earnings of the carriers in agreed proportions. There is nothing here remotely resembling a pool in either form. The most that is claimed is that these parties have agreed that the tonnage shall continue to be shipped as it was before, and this is not proved, but rests solely in the surmises of counsel. Not a word to that effect appears in any of the contracts.

As, then, they do not tend to prove the existence of a pool, they are not relevant to that issue before the Commission, nor to any question of rates or discrimination.

V.

It was contended before and doubtless will be contended here in support of the relevancy and pertinency of the documentary and other evidence called for that they tend to prove the creation or existence of a monopoly or monopolies in restraint of trade between the States contrary to the so-called Anti-Trust Act.

A sufficient answer to that contention is that the proceeding before the Interstate Commerce Commission does not arise under the Sherman Act, and that the "Act to

regulate commerce" confers no authority upon the Commission to make inquiry into offenses of that nature. These inquiries are committed by law to other departments of the Government.

But even if offenses against the Sherman Act were proper subjects of inquiry in this proceeding, it is perfectly clear and plain that no one of the contracts in question in anywise affects either interstate or international commerce; the contracts are wholly subjects of internal and domestic concern and are each and all expressly authorized by the laws of the Commonwealth of Pennsylvania which has exclusive jurisdiction thereof.

United States *vs.* E. C. Knight Co. *et al.*, 156 U. S., 1.

It is respectfully submitted that the order of the Circuit Court should be in all things affirmed.

J. D. CAMPBELL,
For Appellees George F. Baer and William G. Brown.

JOHN G. JOHNSON,
Of Counsel.

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MAR 4 1904
JAMES H. McKENNEY, Clerk

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

WILLIAM H. TRUESDALE, FRED F. CHAMBERS, O. C. POST ET AL.,
Appellees.

BRIEFS FOR APPELLEES.

(Revised.)

WALTER W. ROSS,
Counsel for W. H. TRUESDALE,
FRED F. CHAMBERS,
O. C. POST,
Appellees.

EVENING POST JOB PRINTING HOUSE, NEW YORK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

WILLIAM H. TRUESDALE, FRED. F. CHAMBERS, O. C. POST,
Appellees.

BRIEF ON MOTION TO DISMISS APPEAL.

STATEMENT.

In the fall of 1902, W. R. Hearst filed a petition and complaint before the Interstate Commerce Commission against The Delaware, Lackawanna and Western Railroad Company and other railroad companies in which he alleged (Record 39) that he resided in the City of New York and was of "*necessity a purchaser of anthracite coal*," and he charged that the rates exacted for the transportation of anthracite coal from points in Pennsylvania to New York City were unreasonable and unjust; that six railroads, of which the Delaware, Lackawanna and Western was one, had entered into an agreement with each other to pool the freight revenues in anthracite coal so as to divide the same be-

tween the different lines in agreed proportions, and that the individual shippers of, and dealers in coal had been discriminated against.

The Delaware, Lackawanna and Western Railroad Company in its answer (Rec., 45), denied the petitioner's right to institute and prosecute this proceeding, also that its rates for transporting anthracite coal were unreasonable or unjust, also that it had entered into any unlawful agreement or combination with any railroad company whereby the freights on anthracite coal were pooled, or that it discriminated against any shipper of anthracite coal.

Upon the *ex parte* application of the complainant to the Interstate Commerce Commission in April, 1903, subpœnas *duces tecum* were issued by the Commission and afterwards served upon W. H. Truesdale and F. F. Chambers, requiring each of them to produce all contracts for the purchase or transportation of anthracite coal entered into since January 1, 1901, between the Delaware, Lackawanna and Western Railroad Company and any and all producers of anthracite coal or owners or operators of anthracite coal mines (Record, 54, 55 and 56). Later a subpœna *duces tecum* was served upon O. C. Post.

In response to these subpœnas these appellees appeared before the Commission and testified.

It was admitted before the Commission that the Delaware, Lackawanna and Western Railroad Company had entered into five agreements with five independent operators located upon its line of railroad in the State of Pennsylvania for the purchase of anthracite coal. At the hearing before the Commission, counsel for the complainant Hearst requested witness Fred F. Chambers, as secretary of the Delaware, Lackawanna and Western Railroad Company, to produce said contracts before the Commission inorder that he might offer them in evidence, and make them a part of the record in the matter under consideration by the Commission. Counsel for appellee objected to

the production of the contracts in question for the reasons that they were in no way pertinent, relevant or material to the inquiry before the Commission; they were purely and simply contracts for the purchase of coal by the railroad company in the State of Pennsylvania, where they were made and wholly performed; they related in no way to the transportation of coal; they were contracts made between citizens of Pennsylvania and wholly performed within that State, and the Interstate Commerce Commission was without authority or jurisdiction to inquire into such matters which did not relate to interstate commerce; that the contracts were made between the railroad company and persons who were not parties in the proceeding before the Commission. It also showed that under its charter and the laws of Pennsylvania it was authorized to buy and sell coal, which was admitted. The objections were overruled and the witness was directed by the Commission to produce the contracts. Acting upon the advice of counsel he declined to do so.

Appellee Post, as general auditor of The Dela ware, Lackawanna and Western Railroad Company, was requested by counsel for complainant Hearst to produce before the Commission the vouchers which showed the amounts paid by the railroad company for the coal purchased under the five contracts above referred to. The above objections were also made to the production of the vouchers, but were overruled by the Commission and appellee Post was directed to produce the vouchers. Acting upon the advice of counsel he declined to do so. The vouchers in question were desired merely to show the amount paid by the railroad company to the parties to said agreements for their coal.

Appellee, William H. Truesdale, as president of The Delaware, Lackawanna and Western Railroad Company, was asked certain questions, hereinafter referred to, which pertained to

producing, buying and selling coal by The Delaware, Lackawanna and Western Railroad Company. Counsel for appellee urged the same objections above referred to, which were overruled, and appellee was directed to answer the questions, but acting upon the advice of counsel declined to do so.

Whereupon the Interstate Commerce Commission filed its petition in the Circuit Court of the United States for the Southern District of New York, praying that the witnesses be ordered to produce before the Commission the contracts and vouchers referred to, and that they be required to make full answer to each of the questions referred to. Appellee Chambers appeared and filed his answer (Record, 216), in which he stated that he was the secretary of The Delaware, Lackawanna and Western Railroad Company, which was a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, that under and by virtue of its charter and the laws of said Commonwealth of Pennsylvania it is authorized, among other things, to own and operate railroads, to transport persons and property and to own and operate coal mines and property incident thereto, and to buy and sell coal; and to acquire and hold or guarantee stocks and bonds of other corporations.

He alleged that the application made by the complainant Hearst before the Interstate Commerce Commission for the issuance of a subpœna *duces tecum* to produce the contract in question was *ex parte*, and that no notice was given to him or to said corporation of said application, and that he had no opportunity to appear before the Interstate Commerce Commission to state his reasons why said subpœna *duces tecum* should not be issued. He offered to produce for the inspection of the Court the contracts made by The Delaware, Lackawanna and Western Railroad Company with persons other than the complainant for the purchase of coal, but he objected to and protested against the produc-

tion of said contracts before said Commission at said hearing, and he alleged:

FIRST.—The Delaware, Lackawanna and Western Railroad Company is a Pennsylvania corporation, and authorized by its charter and the laws of that commonwealth, among other things, to buy and sell coal; that it had entered into five certain contracts with certain of the owners of coal mines along its line of railroad within the State of Pennsylvania for the purchose of certain of the coal from the owners thereof; that none of the corporations or persons with whom the railroad company had entered into contracts for the purchase of coal were parties to the hearing before the Commission; that said parties have rights in such contracts; that they would have the right to object to the contracts being produced and made a part of a public record, if they, themselves, were present before the Commission, and the fact that they were not parties before the Commission should not be taken advantage of by the Commission or by the Court, and the private business of persons who are not before the Commission should not be inquired into without their consent.

SECOND.—That said contracts were made by and between citizens of the Commonwealth of Pennsylvania, and were wholly local and domestic contracts, made and performable within the Commonwealth of Pennsylvania, and did not relate to commerce between states or foreign nations. That said contracts and the performance thereof were wholly of local cognizance, and were without the jurisdiction of the Interstate Commerce Commission and they could not be lawfully inquired into in this proceeding.

THIRD.—That said contracts were irrelevant, incompetent and immaterial to the inquiry before the Interstate Commerce Commission on the complaint of said W. R. Hearst.

The appellee further answered that he was ready and willing to appear before the Commission and to answer any questions within his knowledge bearing upon or relating to the relations of said company as a carrier of interstate traffic within the lawful jurisdiction of the Interstate Commerce Commission, but that he respectfully objected to this inquiry of said Commission into the business of said company of mining and selling coal for the reason that it was not within the cognizance of said Commission to make such inquiry. That he was advised and so charged that in case it should be held that said act to regulate commerce conferred upon the Interstate Commerce Commission power to require by subpœna or otherwise, the attendance and testimony of witnesses and the production of books, papers, tariffs and contracts not directly and solely relating to matters under investigation pursuant to the provisions of said act, that then the Court should hold that the said act was unconstitutional, null and void.

The answer of O. C. Post, general auditor of The Delaware, Lackawanna and Western Railroad Company, is found on page 219 of the record, and is similar to that of Fred F. Chambers. The answer of William H Truesdale, president of the said company, is found on page 95 of the record, and is also similar to the answer of Fred F. Chambers.

At the hearing of the matter before the United States Circuit Court the five contracts in question were submitted to the inspection of the Court as offered in the above answer (Record, 831).

The petition of Hearst before the Commission alleged only that he " was of necessity a purchaser of coal." There is no evidence in this record of nearly one thousand pages to sustain even this allegation. He was not a shipper of coal burdened with unjust rates for transportation; none of the seventy-five to one hundred so-called individual anthracite coal operators with mines on the railroads joined with him in his petition, or made any complaint (Rec. 760);

he did not show that he was even a seller of coal—just a seller of newspapers.

The Commission was not conducting a general investigation into the conduct of the business of transportation by the carriers; it was hearing the evidence which pertained to the issues defined by the verified complaint of Hearst and the answers thereto. The witnesses did not refuse to answer any questions propounded by the Commission, counsel only advised the witnesses to refuse to answer irrelevant questions propounded by counsel for Hearst; and counsel offered to withdraw objections to the question if any member of the Commission desired to ask the question (Rec., 679).

The Circuit Court held (Record, 832) that it should follow the decision of the Supreme Court in the Brimson case, and upon application for such an order it did not sit as an appellate tribunal, but should decide all questions raised as to relevancy of testimony as if such questions were raised before it in the first instance, and the Court said:

"There are several witnesses *proceeded* against and that for convenience their cases have been heard on a single petition. Separate orders, however, should be made in each case, *for each case is a separate proceeding instituted in this Court against the particular individual.*"

"Among the objections advanced to the granting of the petition it is contended that the Interstate Commerce Commission has no jurisdiction to hear the complaint for the reason that the complainant is not himself a shipper of coal. It was contended in opposition that the Commission is conducting a general investigation into the conduct of the business of transportation by the defendant carriers, which it has a right to do under the statutes independent of any complaint by a person aggrieved. The record, however, does not sustain the proposition. The proceedings before the Commission were *begun by the service of a formal verified complaint,*

to which *separate answers were interposed by the several defendants;* the petition presented to this Court avers that the refusals to produce documents and answer questions took place in the course of '*a hearing upon said complaint*' which the Commission had duly ordered; the prosecution of the complaint before the Commission is being conducted --as it is most appropriate that such prosecution should be—by the counsel for the complainant.

"In view of the language of the Interstate Commerce act there is great force in the contention that the prosecution before the Interstate Commerce Commission of carriers who violate the statutes should be at the instance of a shipper, and that an individual who merely purchases merchandise, the price of which is advanced by reason of its including the cost of transportation from the place of production to the place of sale, *may not institute and prosecute such a proceeding where no shipper raises any objections to the rates charged.* In view of the other grounds of objection which have been interposed, however, it will not be necessary to decide this question."

In deciding upon the admissibility of the contracts in question the Court said: "*It is entirely a contract of purchase, and does not deal at all with the subject of transportation.* It fixes the price which the Lehigh Valley Coal Company is to pay the seller for coal at a certain percentage of the price at which coal of the same quality and size shall be sold during the month at a specified place. It is in no way different from a contract for the purchase of a specified number of tons of coal at a specified sum in dollars and cents, a contract made in the State of Pennsylvania and to be completed therein by the delivery of the coal at the breakers. * * * The petition to direct the production of this contract is denied" (Rec., 833–4).

The Court further said: "In the case of Fred F. Chambers, secretary of the Delaware, Lackawanna and Western R. R. Company, the contracts referred

to have been submitted to the Court, and, as in the other case, they appear to be all contracts of purchase only. The order to produce is therefore denied" (Record, 834).

"In the case of Orlando C. Post, general auditor of the Delaware, Lackawanna and Western Railroad Company, it appears that the original vouchers asked for show the transactions for the purchase of coal under the contract last referred to, and contain no information whatsoever on the subject of transportation. The motion to require their production is denied" (Record, 834).

The only question which the Court held should be answered by William H. Truesdale (Record, 835) was afterwards withdrawn by the counsel of complainant (Record, 837).

Thereupon the Interstate Commerce Commission prayed an appeal to the Supreme Court of the United States from the order of the Circuit Court entered dismissing their petition (Record, 838), and among their assignments of error we find (Record, 839) the dismissal of the petition of the Commission for an order requiring Fred F. Chambers, secretary of the railroad company to produce the contracts above referred to, and for an order requiring O. C. Post to produce the vouchers in question and for an order requiring William H. Truesdale to answer the following questions:

"Who sells your coal on commission?"

"You maintain a sales department of your own at the City of New York, don't you?"

"Do you consider that twenty cents a ton commission that you have charged here against the cost and expense of mining is a fair and reasonable charge for commissions?" "Do you sell anthracite coal at tidewater?"

"What is the price of coal to-day sold by the Delaware, Lackawanna and Western at tidewater?" "What has happened to make the advance? Has there been any change that you know of in the supply of coal since yesterday?"

"Have you observed any change in the demand for coal since yesterday?"

"Has the cost of producing coal gone up any since yesterday?"

"Who fixes the price of Delaware, Lackawanna and Western coal at tidewater?"

"How do you account for the fact that the price circulars are uniform, if there is no agreement?"

"Don't you know, from your experience and knowledge of the business, that the increase in wages will not make a difference of over fifteen cents a ton in the cost of producing anthracite coal?" (Rec., 835–6.)

This proceeding of the Interstate Commerce Commission was instituted under the amendment to Section Twelve of the "Act to regulate Commerce," passed February 10, 1891 (Supp. U. S. R, S., p. 891), which provides "* * * upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all *necessary proceedings* for the enforcement of the provisions of this act * * * and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements and documents *relating to any matter under investigation* * * * And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commission (and produce books and papers if so ordered) and give evidence touching the matter in question."

The Circuit Court found that the above evidence

did not relate to the matter under investigation as defined by the complaint of Hearst and the answers thereto, and dismissed the petition of the Commission, from which order this appeal is taken.

BRIEF.

The first question which arises is—has this Court jurisdiction to inquire whether the Circuit Court erred in holding that the above evidence was irrelevant?

In a proceeding of this kind by the Commission against witnesses to compel them to give evidence requested by a complainant, does an appeal from the Circuit Court lie only to the Supreme Court?

No constitutional question is involved here as in the Brimson case, 154 United States, 447.

This direct appeal is not authorized under Section 5 of the Act of March 3, 1891, for the question of the jurisdiction of the Circuit Court is not involved nor is the constitutionality of any law of the United States drawn in question, nor is the constitution or law of a state claimed to be in contravention of the Constitution of the United States.

No question of the jurisdiction of the Circuit Court has been certified to this Court. No construction or application of the Constitution can be said to have been involved in the judgment below, nor did the Circuit Court construe the Constitution, nor was it requested to construe it. Cornell *vs.* Green, 163 U. S., 78. In Ansbro *vs.* U. S., 159 U. S., 698, this Court said: "It is only when the constitutionality of a law of the United States is drawn in question, not incidentally, *but necessarily and directly*, that our jurisdiction can be invoked for that reason. An assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised in the Court below and rulings asked thereon so as to give jurisdiction to this

Court under the fifth section of the Act of March 3, 1891."

See also

Lampasas *vs.* Bell, 180 U. S., 276.
Muse *vs.* Arlington Hotel Co., 168 U. S., 430.
Carey *vs.* Houston & Texas Central Ry., 150 U. S., 170.
Defiance Water Company *vs.* Defiance, 191 U. S., 184.
Arbuckle *vs.* Blackburn, 191 U. S., 405.

It being determined that the appeal was improperly taken by appellant to this Court under the acts prior to 1903, the question then arises:

Is this direct appeal to the Supreme Court authorized by either or both the acts of February 11, 1903, and of February 19, 1903?

Section 3 of the act of February 19, 1903, entitled, "An Act to *further* regulate commerce with foreign nations and among States," Vol. 32, United States Statutes at Large, page 848, provides "that whenever the Interstate Commerce Commission shall have reasonable ground for belief that any *common carrier* is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the Circuit Court of the United States sitting in equity having jurisdiction. * * * It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings. * * * And in proceedings under this Act and the acts to regulate commerce, the said courts shall have the power to compel the attendance of witnesses both upon the part of *the carrier and the shipper.* * * *

"Provided, That the provisions of an Act entitled

An Act to expedite the hearing and determination of *suits in equity* pending or hereafter brought under the Act of July 2, eighteen hundred and ninety, entitled, 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February 11, 1903, shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission."

The Act of February 11, 1903, found in the same volume, page 823, provides, "That in any suit in equity pending or hereafter brought in any Circuit Court of the United States under the Act entitled, 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety. 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the Clerk of such Court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such Clerk to each of the Circuit Judges of the Circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the Circuit Judges of said Circuit, if there be three or more; and if there be not more than two Circuit Judges, then before them and such District Judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

Section 2. That in every suit in equity pending or hereafter brought in any Circuit Court of the

United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the Circuit Court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: Provided, that in any case where an appeal may have been taken from the final decree of a Circuit Court to the Circuit Court of Appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law."

It is necessary for this Court in construing these acts to determine whether Congress intended that any proceeding prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission an appeal from the order of the Circuit Court would lie only to the Supreme Court.

In Ogden *v.* Saunders, 25 U. S., 331, Chief Justice Marshall said concerning the principles of construction which ought to be applied to the Constitution of the United States:

"To say that the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended; that its provisions are neither to be restricted into insignificance, nor extended to objects not comprehended in them nor contemplated by its framers, is to repeat what has been already said more at large, and is all that can be necessary."

Chief Justice Fuller said in Petri *v.* Commercial National Bank of Chicago, 142 U. S., 650:

"The rule that every clause in a statute should have effect, and one portion should not be placed in antagonism to another, is well settled; and it is also held that it is the duty of the Court to ascertain the

meaning of the Legislature from the words used and the subject matter to which the statute relates, and to restrain its operation within narrower limits than its words import if the Court is satisfied that the literal meaning of its language would extend to cases which the Legislature never intended to include in it."

Mr. Justice Peckham said in McKee *v.* United States, 164 U. S., 293:

"But we think a perusal of the whole act prevents our giving this unlimited construction, because to do so would conflict with what we think was the intention of Congress, gathered from the provisions of the whole act. Under such circumstances it is not only the right, but it is the plain duty, of the Court to limit by a proper construction the otherwise boundless application of the general language used in the statute."

Mr. Justice Brewer said, in Smith *v.* Townsend, 148 U. S., 494:

"It is well settled that where the language of a statute is in any manner ambiguous, or the meaning doubtful, resort may be had to the surrounding circumstances, the history of the times, and the defect or mischief which the statute was intended to remedy." * * *

"In United States *v.* Union Pac. R. Co., 91 U. S., 72, 79, it was said that 'courts, in construing a statute may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it Aldridge *v.* Williams, 46 U. S., 3 How., 24; Preston *v.* Browder, 14 U. S., 1 Wheat., 120.' And in Platt *v.* Union Pac. R. Co., 99 U. S., 48, 64, that, 'in endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at

things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances.'"

Mr. Justice Shiras, in Van Patten *v.* Chicago, M. & St. P. Ry. Co., 81 Fed. Rep., 547, said:

"The intent of Congress is to be gathered from a consideration of the entire act, and not solely from detached portions thereof, and the familiar rule of construction is to be followed, to wit, that, in determining the meaning of the words employed, the general purpose of the act and the evil sought to be remedied must be always kept in mind, and, furthermore, parts of the act are not to be so construed as to defeat other important features of the same; nor is such a construction to be given to the act, in whole or in part, as may tend to prevent the proper enforcement of the legislative purpose."

In Smythe *v.* Fiske, 23 Wall., 374, 380, this Court said: "A thing may be within the letter of the statute and not within its meaning, and within its meaning though not within its letter. The intention of the lawmaker is the law." And in Lau Ow-Bew *v.* The United States, 144 U. S., 47, 59, "Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion."

Let us apply these principles to the statutes in question.

The Act of February 19, 1903, as shown by its title, is "An Act to *further* regulate commerce with foreign nations and among States." It specifically provides "that whenever the Interstate Commerce Commission shall have reasonable ground for belief that any *common carrier* is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file,

or is committing any discrimination forbidden by law, a petition may be presented alleging SUCH FACTS to the Circuit Court of the United States sitting in equity."

It provides for a new class of actions, *suits in equity*, brought by the Interstate Commerce Commission against common carriers to prevent them from transporting passengers or property "at less than published rates on file," or "committing any discrimination forbidden by law." The petition to the Circuit Court must "*alleye such facts.*" Such are an important class of cases, their results are far-reaching, frequently the business of the public is materially affected, and it was the purpose—the intention of Congress that a suit in equity in which was involved "*such facts*"—"*discriminations forbidden by law*"—should be speedily determined and should have priority over other litigations because of its public nature, and in order to accomplish this object Congress added a proviso to this act that "any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission" should come within the provisions of the act to expedite the hearing and determination of certain suits in equity.

Congress had under consideration at that time the question of expediting the determination of an important class of cases, and when it used the word "case" in the proviso it intended to provide only for suits in equity in which were involved the questions of *discriminations on the part of carriers as provided in the body of the act.*

It was not the intention of Congress, nor do the words of the Act provide, that a proceeding by the Commission against recalcitrant *witnesses* (not carriers) should have priority over important litigation, and that the appeal by the Commission from an adverse decision of the Circuit Court should lie only to the Supreme Court.

This proceeding is not authorized by either of the Acts of February, 1903; it was instituted and prose-

cuted under the amendment to Section 12 of February 10, 1891, of the act to regulate commerce.

The provisions of the act of February 19, 1903, in no way apply to this proceeding.

The provisions of the Acts are entirely different.

The Act of February 10, 1891 (*supra*), provides specifically for the character of proceedings which were instituted in the Circuit Court on behalf of the Commission and Hearst. An appeal from an order, as in the matter under consideration, would lie only to the Circuit Court of Appeals under the provisions of the Evarts Act.

The provisions of the Act of February 10, 1891, in no manner conflict with the provisions of the Act of February 19, 1903, and no portion of it is repealed.

The one provides for "necessary proceedings" against witnesses; the other provides for an important class of suits in equity against "common carriers." When Congress used the word "case" in the proviso, it meant suit in equity brought against a common carrier by the Commission to prevent discrimination, as described in the body of the act.

It must be borne in mind that the sole question which the Circuit Court was called upon to decide in this proceeding was whether certain evidence was relevant to the matter under investigation on the petition of Hearst before the Commission. The petition of the Commission in the Circuit Court was in the nature of a collateral proceeding to the complaint of Hearst then pending before it. It was not a suit in equity to enforce a right or redress a wrong, public or private, or to remedy the wrongs specifically described in the Act of February 19, 1903.

If Congress had intended to place the burden upon this Court of reviewing proceedings of this kind, it undoubtedly would have said so in plain language.

The reviewing of questions of relevancy of evidence is largely a matter of detail work, and it was for the purpose of relieving this Court of such work, and that it might devote itself to the per-

formance of more important duties, that Congress passed the Act of March 3, 1891, commonly known as the "Evarts Act."

This Court said in the case of McLish *v.* Roff, 141 U. S., 665, in construing the Act of March 3, 1891:

"It is a matter of public history, and is manifest on the face of that act, that its primary object was to facilitate the prompt disposition of cases in the Supreme Court, and to relieve it of the enormous overburden of suits and cases resulting from the rapid growth of the country and the steady increase of its litigations."

This proceeding was instituted in the Circuit Court under the Act of February 10, 1891; an appeal, if prosecuted, should have been taken to the Circuit Court of Appeals under the Evarts Act. The provisions of the Act of February 19, 1903, do not apply to a proceeding of this kind, and neither the Act of February 10, nor March 3, 1891, were repealed thereby.

The motion to dismiss the appeal should be granted.

Interstate Commerce Commission *v.* Atchison, &c., R. Co., 149 U. S., 264.

This Court being without jurisdiction to inquire whether the Circuit Court erred in holding that the evidence sought by the Interstate Commerce Commission at the request of Hearst was irrelevant, the appeal should be dismissed.

Walter H. Ross
Counsel etc

BRIEF ON THE MERITS.

I.

CIRCUMSTANCES OF THE REFUSALS.

The Interstate Commerce Commission filed its petition in the Circuit Court in which it alleged that W. R. Hearst had filed a complaint against certain railroad companies which the companies had answered. It attached to its petition a copy of the complaint and the answers, and further alleged that during the hearing upon said complaint the counsel for complainant requested certain witnesses to produce certain papers and documents and to answer certain questions which they had declined to do for the reasons above set forth. The purpose of the petition was to invoke the aid of the Court in requiring the testimony of the recalcitrant witnesses and the production of the books, papers and documents (Rec. pp. 2–38).

The complaint of Hearst alleged that he was a resident of the City of New York, and was "of necessity a purchaser of anthracite coal"; and that unless the relief sought in his petition was granted that he and thousands of other persons similarly situated and independent producers of anthracite coal would sustain irreparable injury. He then alleged that the railroad companies were charging unreasonable and unjust rates for transporting coal from points in the anthracite coal region to the seaboard; that the said railroad companies were engaged in pooling the freights on anthracite coal; and further, that the independent producers and dealers in coal were being discrimi-

nated against. The prayer of his petition was that the defendants be required to make full answer to the foregoing charges, and that orders be entered commanding each of the defendants to refrain from the said violations of the act to regulate commerce (Rec., 39–41).

Although complainant Hearst consumed several weeks of the time of the Commission and of defendants, at considerable cost and expense to defendants, and although the evidence which he produced comprises nearly one thousand pages of this record, yet he did not personally appear before the Commission, nor did he show that he was even a purchaser of anthracite coal; nor did any of the seventy-five to one hundred so-called individual producers of anthracite coal (Rec., 760) appear before the Commission, or in any way join with him in producing evidence before the Commission of any of the alleged unlawful violations of the act to regulate commerce.

He was satisfied to call to the witness stand, primarily, prominent officials of the defendant railroad companies whose testimony, when published in his newspapers, might interest his readers and possibly aid in the sale of his newspapers.

The Commission itself was not conducting an investigation; it was simply hearing the complaint of Hearst, presumably to make reparation of any wrongs the complainant might show he had sustained.

But what wrong could he sustain under the allegations of his petition, and what reparation was it possible for the Commission to make, acting within the lawful powers conferred upon it by Congress?

It was under these circumstances that counsel advised the appellees to refuse to answer the questions referred to, or to produce the contracts and papers which were in their charge, as officers of the railroad company.

II.

THE CIRCUIT COURT DID NOT ERR IN DENYING THE MOTION OF THE COMMISSION TO REQUIRE THE WITNESSES TO PRODUCE THE FIVE PURCHASE CONTRACTS WHICH THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY HAD ENTERED INTO WITH CERTAIN OWNERS OF COAL MINES ADJACENT TO ITS RAILROAD IN THE STATE OF PENNSYLVANIA, OR THE VOUCHERS, OR TO ANSWER THE IRRELEVANT QUESTIONS.

Appellee Chambers was within his lawful rights in refusing to produce the five contracts in question. These contracts were submitted to the Circuit Court for its inspection, and are likewise tendered to this Court, and the Court held that the agreements contained in said contracts did not pertain to the subject of transportation; that they provided for the purchase of coal, were made in the State of Pennsylvania and performed therein by the delivery of the coal at the breakers.

These agreements show they were made between citizens of the State of Pennsylvania, and some are renewals of agreements made more than twenty years ago. Some provide for the sale of a portion of the output of the collieries, and others of the entire output of the collieries, to the railroad company. The contracts also show that the price which the railroad company is to pay the seller for coal is fixed at a certain percentage of the price at which coal of the same quality and size shall be sold during the month at a specified place. As said by the Circuit Court in its opinion, "It is in no way different from a contract for the purchase of a specified number of tons of coal at a specified sum in dollars and cents."

What interest did Hearst have in these contracts? What was the source of his right to inspect them, or to publish them in his newspapers? None of the parties to these agreements were complaining or seeking to have them set aside as being illegal or *ultra vires* contracts. Is there any justification for his assumption of the rôle of protector? Has he the right to assume the prerogatives of the Attorney-General of the United States and attempt in this proceeding before the Interstate Commerce Commission to enforce the provisions of the Sherman Anti-Trust Act, and have these contracts declared void because they are in unlawful restraint of trade? As was very aptly remarked by Judge Lacombe: "This, however, is not a prosecution under the Anti-Trust Act, nor is the Interstate Commerce Commission the forum before whom such a prosecution is conducted."

These contracts made between citizens of the State of Pennsylvania are private, and the parties thereto are entitled to the protection guaranteed by the Constitution at least until they have been charged in the proper forum with having violated some law of the land.

It is elementary that the complainant Hearst having no interest in these contracts has no right to demand their production.

Greenleaf, on Evidence, says (Sec. 298): "It is necessary that the plaintiff, in order to be entitled to the production of documents, *should either have a right to the documents themselves*, or a sufficient interest in inspecting them. And this right must appear in his bill, and cannot, regularly, be established by collateral proof."

In 1890, John C. Haddock, a producer and shipper of coal, filed a complaint against The Delaware, Lackawanna and Western Railroad Company before the Interstate Commerce Commission and applied to the Commission for a subpœna *duces tecum* requiring the Railroad Company to produce certain contracts which it had for the purchase of coal of others than the complainant

Haddock. A hearing was had upon the application. Mr. Justice Cooley, then chairman of the Commission denied the application and said:

"By its motion for subpœnas *duces tecum* complainant is understood to desire to obtain, as instruments of evidence, among other things, certain contracts for the sale of coal made between respondent and third parties. If such contracts were put in evidence they might show, perhaps, what respondent is receiving for its coal at some of the points of delivery. * * * But we do not think that complainant is entitled to call for the contracts themselves for this purpose. Third persons have rights in such contracts. They would have a right to object to the contracts being produced if they themselves were present before us at the hearing, but they can certainly lose no rights by reason of being strangers to the proceedings and not present. There may, for aught we know, be matters in their contracts with which neither this complainant nor any other individual of the public has any concern whatever or any business to inquire into. We do not know that such is the case, but we do know for the purpose of ascertaining the selling price of coal it is not necessary that the production of the contracts be required, and also, as has been said, that parties interested in them, and who are not here to consent to their being produced, might rightfully object if they were here" (Vol. IV., I. C. C. R., 322).

In the case of the Interstate Commerce Commission v. Brimson, 154 U. S., p. 478, Mr. Justice Harlan said:

"We do not overlook those constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of

making inquiry into the private affairs of the citizen (Kilbourne *v.* Thompson, 103 U. S., 168, 190). We said in Boyd *v.* United States, 116 U. S., 616, 630—and it cannot be too often repeated—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of his life. As said by Mr. Justice Field *in re* Pacific R. Commission, 32 Fed. Rep., 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely the protection of his person from assault, but exemption of his private affairs, books and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'

"It was said in argument that the twelfth section was in derogation of those fundamental guarantees of personal rights that are recognized by the Constitution as inhering in the freedom of the citizen. It is scarcely necessary to say that the power given to Congress to regulate Interstate Commerce does not carry with it any power to destroy or impair those guarantees. This Court has already spoken fully upon that general subject in Counselman *v.* Hitchcock, 142 U. S., 547. We need not add anything to what has been there said. Suffice it in the present case to say, that as the Interstate Commerce Commission, by petition in a Circuit Court of the United States, seeks upon grounds distinctly set forth, an order to compel appellees to answer particular questions and produce certain books, papers, &c., in their possession, *it was open to each of them to contend before that Court that he was protected by the Constitution from making answer to the questions propounded to him; or that he was not legally bound to produce the books, papers, &c., ordered to be produced; or that neither the questions propounded nor the books,*

papers, &c., called for relate to the particular matter under investigation, nor to any matter which the Commission is entitled under the Constitution or laws to investigate. These issues being determined in their favor by the Court below the petition of the Commission could have been dismissed upon its merits."

And Mr. Justice Brewer, in his dissenting opinion in the same case (155 U. S., 1) said:

"It must be borne in mind that this is purely and solely a proceeding brought for contempt. No action is pending in the Court to enforce a right or redress a wrong, public or private. No inquiry is being carried on in it with a view to the punishment of crime, nothing sought to be done for the perpetuation of testimony or in aid of any judicial proceeding."

III.

The vouchers in the custody of appellee Post, the general auditor of the railroad company, which counsel for complainant Hearst requested him to produce before the Commission, merely showed the amount paid for the coal purchased under the above contracts, and were held by the Circuit Court to contain no information whatsoever on the subject of transportation, and the motion to require their production was denied.

If the ruling was right as to the production of the contracts it was also right as to the production of the vouchers. The same principles apply to both, and it is unnecessary to reiterate them.

IV.

The Circuit Court denied the motion to require appellee Truesdale, President of The Delaware, Lackawanna and Western Railroad Company, to answer the questions pertaining to the sale and cost of the production of coal (*supra*, 9, 10; Rec. 835–6).

He declined to answer these questions under advice of counsel, who objected on the grounds that the questions were not relevant, &c. (*supra*, 4, 5, 6).

The Delaware, Lackawanna and Western Railroad Company was incorporated about seventy-two years ago under special acts of the Commonwealth of Pennsylvania. The Commonwealth granted it unusual privileges; the privilege not only of a carrier of passengers and property, but also the right to own coal lands and to engage in the mining, buying and selling of coal, and to hold stocks and bonds in other companies.[1]

Undoubtedly the reason the Legislature granted it the right to engage in the coal mining business was the desire of the Legislature to encourage the development of the mineral resources of the Commonwealth, which were then dormant.

When the railroad company entered into the contracts above referred to for the purchase of certain coal from the owners thereof situated upon its line of railroad in the Commonwealth of Pennsylvania, it was acting entirely within its corporate powers. The coal which it purchased from the owners thereof under said agreements was delivered to the railroad company at the breakers in the Commonwealth of Pennsylvania and then became the personal property of the railroad company. Undoubtedly, much of said coal was used by the railroad company in its shops, stations, on its engines and trains, in the conduct of its business in Pennsylvania and elsewhere.

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[1] Laws of Pennsylvania, 1832, p. 316; Laws of Pennsylvania, 1849, p. 649; Laws of Pennsylvania, 1855, p. 110; Laws of Pennsylvania, 1869, p. 31, Etc.

In what respect can it be said that the provisions of the contracts in question governing the purchase of certain coal by the railroad company, or the amount paid for said coal as shown by the vouchers referred to, or the questions as to the price, or cost of producing of coal, were relevant to the issues raised in the complaint of Hearst before the Commission, which were—the reasonableness of the rates for transporting coal to tide-water; the maintenance of a pool for the division of revenues derived from transporting the coal; and unjust discrimination against independent producers of coal?

Hearst did not offer even a scintilla of evidence to the effect that there was any pooling of the freight revenues, nor did he bring before the Commission a single producer or shipper of coal to complain of unjust discrimination.

Complainant Hearst having alleged (but not proven) that he was of necessity a purchaser of anthracite coal, and having failed to show that he was a shipper of coal, the only possible relief he could obtain under his complaint would be an order from the Commission commanding the defendant Company to reduce the price of its coal to Mr. Hearst. Clearly it is not within the jurisdiction of the Interstate Commerce Commission to grant such relief.

V.

COMPLAINANT HEARST CONFUSED THE PROVISIONS OF THE ACT TO REGULATE COMMERCE WITH THE PROVISIONS OF THE ACT TO PROTECT TRADE AND COMMERCE AGAINST UNLAWFUL RESTRAINT AND MONOPOLIES.

The jurisdiction of the Interstate Commerce Commission is limited by the provisions of the act, and

the amendments and supplements thereto, by which it was created; under these provisions the range of inquiry of the commission is limited to the questions of interstate transportation by railroads. The range of inquiry granted by Congress to the commission is much narrower than that granted under the provisions of the Sherman Anti-Trust Act, and counsel for complainant Hearst, in his proceeding before the commission, was evidently confused in his interpretation of these acts. It is clear that he was attempting to proceed under the provisions of both the Acts; this is shown in the opening remarks of Mr. Shearn, counsel for Mr. Hearst, before the Interstate Commerce Commission, as follows:

(Rec. 237, 238):

"Then it was that Mr. Hearst turned to this forum, recollecting its non-partisan character; recollecting something of its history; recollecting what it had to do with the institution of every proceeding that has taken place under the Sherman anti-trust law that has amounted to anything, and that it has had its initiative before this Commission; recollecting what happened in the beef merger case and in the Northern Pacific case, and we have come here and shall lay before this Commission the evidence we have gathered establishing the facts that I have been discussing and establishing, I believe, the existence of a hard-and-fast combination between at least six of these coal carriers, whereby there is no competition in either the production, transportation, or sale of anthracite coal."

If it is true that a combination in restraint of trade exists, to which The Delaware, Lackawanna and Western Railroad Company, or any of its officers, are parties, Congress, in the exercise of its power to regulate commerce between States, has fully provided for the emergency, and the provisions of the Sherman Anti-Trust Act will undoubtedly remedy

the evil through the power of the Department of Justice.

But this, as said by Judge Lacombe, is not such a proceeding.

We will meet that issue when the charge is preferred in the proper forum.

VI.

THE JURISDICTION OF THE COMMISSION.

The jurisdiction of the Interstate Commerce Commission is defined in the act to regulate commerce (Vol. 1, Sup. R. S. of U. S., 529);

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, *for a continuous carriage or shipment*, from one State * * * to another State * * *. and also to *the transportation* in like manner of property shipped from any place in the United States to a foreign country. * * * Provided, however, that the provisions of this Act shall not apply to the *transportation* of passengers or property, or to the receiving, delivering, storage or handling of property *wholly within one State*, and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

Mr. Justice Brewer said in Interstate Commerce Commission *v.* C. N. O. & T. P. Ry. Co., 167 U. S., 506, in speaking of the functions of the Commission:

"It is charged with the duty of seeing that there is no violation of the long and short haul clause;

that there is no discrimination between individual shippers, and nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right which is the great purpose of the Interstate Commerce Act shall be secured by *all shippers.*"

And, again, in the same case the language of Mr. Justice Jackson was adopted as follows:

"'Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits.'"

In United States *v.* Freight Association, 166 U. S., 357-8, Mr. Justice White said: "The statute, commonly known as the Interstate Commerce Act, was a special act, and *it was intended to regulate interstate commerce transported by railway carriers. All* its provisions, directly and expressly, related to this subject." * * * "That act was the initiation of a policy by Congress looking to the development and working out of a harmonious system to regulate the highly important subject of interstate *transportation*" * * * (370). "It cannot be questioned that the Interstate Commerce Act was intended by Congress to inaugurate a new policy for the purpose of reasonably controlling interstate commerce rates and the dealings of carriers with reference to such rates."

The contracts in question contained agreements only for the purchase of coal—not for its transportation from one State to another.

There can be no reasonable doubt that a contract made between citizens of the State of Pennsylvania which provides that the owner will sell a part or all of the coal which he digs from his mines to the purchaser at a certain price and the coal is delivered by the seller to the purchaser at the mines in the State of Pennsylvania is wholly a domestic transaction and governed exclusively by the domestic law, if such law is not in conflict with the Constitution of the United States. The coal which is the subject of the contract is a part of the general mass of property of that State and subject to its jurisdiction.

The purchase of the coal at the mines was a domestic transaction and subject exclusively to the laws of Pennsylvania, and the Interstate Commerce Commission exceeded its jurisdiction when it directed the witnesses, at the request of Hearst, to produce such contracts for his inspection, or when it directed the witnesses to produce papers showing the cost of such coal, or to answer questions as to the cost of producing coal or selling it.

When, however, the coal started on its "final movement for transportation" from Pennsylvania to New Jersey—or any other State—*the rate charged for its transportation* became a proper subject of inquiry before the Commission, under proper circumstances. The witnesses did not refuse to give any evidence on that subject.

But when the coal arrived at its destination in another State it forthwith became intermingled with the property of such State and subject to its jurisdiction, and the Commission was without jurisdiction to require the witnesses to answer questions as to the selling price of coal.

These principles are firmly established by the decisions of this Court:

Brown *v.* Huston, 114 U. S., 622.
Pittsburg Coal Co. *v.* Betz, 156 U. S., 577.

Coe *v.* Errol, 116 U. S., 517.
Hopkins *v.* United States, 171 U. S., 578.
United States *v.* Knight, 156 U. S., 1.
Kelly *v.* Rhoads, 188 U. S., 1.
Diamond Match Co. *v.* Ontonagon, 188 U. S., 82.

Mr. Justice Brown said in Kelley *v.* Rhoads, 188 U. S., page 5:

"The law upon this subject, so far as it concerns interference with interstate commerce, is settled by several cases in this court, which hold that property actually in transit is exempt from local taxation, although if it be stored for an indefinite time during such transit, at least for other than natural causes or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities (State, Detmold, Prosecutor, *v.* Engle, 34 N. J. L., 425; Standard Oil Co. *v.* Bachelor, 89 Ind., 1; Burlington Lumber Co. *v.* Willetts, 118 Ill., 559).

"The first case in which the question arose is that of Brown *v.* Houston, 114 U. S., 622, in which it was held that coal mined in Pennsylvania and sent by water to New Orleans to be sold in the open market there on account of the owners in Pennsylvania, and lying at New Orleans in flatboats for sale, became intermingled, on its arrival there, with the general property of the State, and was subject to taxation under the general laws of Louisiana, although it might have been, after arrival, sold from the vessel on which the transportation was made, without being landed, and for the purpose of being taken out of the country by a vessel bound to a foreign port. The case was affirmed in Pittsburgh & S. Coal Co. *v.* Bates, 156 U. S., 577, which differed from the former only in the fact that the coal did not reach New Orleans, the port of destination, but was still on the Mississippi River, nine miles above Baton Rouge, where it was held for sale. It ap-

peared that the boats were held subject to the orders of plaintiff to be navigated to such place or places as he might deem convenient or advantageous to the trade in which he was engaged.

"In Coe *v.* Errol, 116 U. S., 517, it was held that logs cut in New Hampshire, which were hauled down to the town of Errol, on the Androscoggin River in that State, to be thence floated down the river to Lewiston, Maine, and were awaiting a convenient opportunity for such transportation, were still a part of the general mass of property of the State, liable to taxation, if taxed in the usual way in which such property was taxed in that State. It was a stipulated fact that the timber thus cut had lain over one season, being about a year, in the Androscoggin River in that State, either in Errol, Dummer, or Milan; and that other timber referred to in the petition as having been cut in Maine had lain over in Errol since the spring or summer before the taxation. The question is thus stated by Mr. Justice Bradley: 'Are the products of a State, though intended for exportation to another State, and partially prepared for that purpose by being deposited at a place or port of shipment within the State, liable to be taxed like other property within the State?' Said he: 'There must be a point of time when they cease to be governed exclusively by the domestic law, and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commenced their final movement for transportation from the State of their origin to that (the State) of their destination * * *. Until then it is reasonable to regard them as not only within the State of their origin but as a part of the general mass of the property of that State, subject to its jurisdiction, and liable to taxation there.'

"The substance of these cases is that, while the property is *at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to*

taxation. But if it be actually in transit to another State, it becomes the subject of interstate commerce, and is exempt from local assessment."

Mr. Justice McKenna, in holding that logs while waiting in a boom or sorting gap to be shipped by rail to a point outside the State are not the subject of interstate commerce so as to be exempt from State taxation, said in Diamond Match Co. *v.* Village of Ontonagon, 188 U. S., 93:

"In Brown *v.* Houston, 114 U. S, 622, the property (coal in barges) had reached the State, but was yet in the boats in which it had been brought into the State. While on the barges it was offered for sale. It was held it had become part of the property of the State and was subject to taxation. Pittsburg and S. Coal Co. *v.* Bates, 156 U. S., 577, had facts assimilating it to the case at bar, and it was affirmed on the authority of Brown *v.* Houston. As in the latter case the tax was on coal in barges shipped from the mines in Pennsylvania, and consigned to New Orleans, La. The coal, however, had not reached, as the coal in Brown *v.* Houston, its exact destination. To accommodate the exigencies of the owners' business, the barges (about 100 in number) were stopped and moored in the Mississippi River at a convenient mooring place about nine miles above the port of Baton Rouge.' The coal was held subject to taxation.

"In Coe *v.* Errol, 116 U. S., 517, logs which had been cut in the State of Maine, and others which had been cut in the State of New Hampshire, were floated in the course of transit down a stream in New Hampshire to the Town of Errol, in the latter State; thence to be floated down the Androscoggin River to the State of Maine. The Town of Errol assessed upon the property a county, town, school and highway tax. The tax was sustained by the Supreme Court of the State of New Hampshire as to the logs cut in that State, and abated as to those

cut in Maine. The judgment was affirmed by this Court.

"Mr. Justice Bradley, delivering the opinion of the Court, expressed the contentions of the parties in two questions:

'Are the products of a State, though intended for exportation to another State, and partially prepared for that purpose by being deposited at a place or port of shipment within the State, liable to be taxed like other property within the State? Do the owners' state of mind in relation to the goods—that is, his intent to export them—and his partial preparation to do so, exempt them from taxation? This is the precise question for solution.'

"It is obvious that like questions could be framed upon the facts of the case at bar to express the propositions presented. Mr. Justice Bradley's observations therefore become pertinent and decisive. He discussed every consideration. He clearly exhibited the extent of the power of the State over the property within it, whether in motion or at rest, though destined for points out of it. He said:

'There must be a point of time when they (goods destined to other States) cease to be governed exclusively by the domestic law, and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commenced their final movement for transportation from the State of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or on a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on

their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State.'

"And further:

'But no definite rule has been adopted with regard to the point of time at which the taxing power of the State ceases as to goods exported to a foreign country or to another State. What we have already said, however, in relation to the products of a State intended for exportation to another State will indicate the view which seems to us the sound one on that subject, namely, that such goods do not cease to be part of the general mass of property in the State, subject as such to its jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject. It seems to us untenable to hold that a crop or a herd is exempt from taxation merely because it is, by its owner, intended for exportation. If such were the rule in many States there would be nothing but the lands and real estate to bear the taxes. Some of the Western States produce very little except wheat and corn, most of which is intended for export; and so of cotton in the Southern States. Certainly, as long as these products are on the lands which produce them, they are part of the general property of the State. And so we think they continue to be until they have entered upon their final journey for leav-

ing the State and going into another State. It is true, as was said in the case, The Daniel Ball, 10 Wall., 557, 565, *sub nom:* 'Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.' But this movement does not begin until the articles have been shipped or started for transportation from the State to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence, is no part of that journey.'

"These cases are referred to in Kelley *v.* Rhoads, 188 U. S., 1, as defining the taxing power of a State. And their substance is declared to be "that while the property is at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation. But if it be actually in transit to another State, it becomes the subject of interstate commerce, and is exempt from local assessment."

"In further specialization of these propositions we may say that the cases establish that there may be an interior movement of property which does not constitute interstate commerce, though property come from or be destined to another State. In the one case, though it have not reached its place of disembarkation or delivery it may be taxed, 114 U. S., 622. In the other case, until it be shipped or started on its final journey it may be taxed, 116 U. S., 517.

"The case at bar falls within this principle."

Mr. Justice Peckham, in Hopkins *v.* United States, 171 U. S., 588, said:

"If an owner of cattle in Nebraska accompanied them to Kansas City and there personally employed one of these defendants to sell the cattle at the stock yards for him on commission, could it be properly said that such defendant in conducting the sale for his principal was engaged in interstate commerce?

Or that an agreement between himself and others not to render such services for less than a certain sum was a contract in restraint of interstate trade or commerce? We think not. On the contrary, we regard the services collateral to such commerce and in the nature of a local aid or facility provided for the cattle owners towards the accomplishment of his purpose to sell them; and an agreement among those who render the services relating to the terms upon which they will render them is not a contract in restraint of interstate trade or commerce."

In the Hopkins case, *supra,* the Court was engaged in construing and applying the provisions of the Sherman Anti-Trust Act, and in the case of United States *v.* Knight, 156 U. S., 1, the construction of that act was involved, and Chief Justice Fuller said (pp. 13, 14):

"The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacture does not determine the time when the article or product passes from the control of the State and belongs to commerce. This was so ruled in Coe *v.* Erroll, 116 U. S., 517, in which the question before the Court was whether certain logs cut at a place in New Hampshire and hauled to a river town for the purpose of transportation to the State of Maine were liable to be taxed like other property in the State of New Hampshire. Mr. Justice Bradley, delivering the opinion of the Court, said: 'Does the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution. * * * There must be a point of time when they ceased to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which

they commence their final movement from the State of their origin to that of their destination.'"

The coal having arrived at its destination may be stored for weeks or months or possibly years awaiting its demand for use. It is manufactured at the breakers into different sizes—a portion for domestic uses and the balance for use primarily in producing steam. It is sold in competition with coal from hundreds of mines, from many States in the Union and from foreign countries. Some of the coal may be sold to an individual for his domestic use, or to a dealer in coal, or to a manufacturer or to a steamship company or to an electric or steam railway company, in fact to whomsoever may desire to purchase it—but the price it may sell for depends on the size of the coal, its quality, the quantity desired, the amount the owner may have for sale, the locality, the character of the customer, the general conditions of the market—the price will vary from hour to hour. The sale of coal is a matter of private contract. The coal at destination being a part of the mass of the general property of the State, is subject to the jurisdiction of the State. The question of the price received from the sale of coal which may occur weeks or months after it arrived at destination surely is not a question which the Interstate Commerce Commission—clothed with its limited jurisdiction over interstate transportation—is justified in directing a witness to answer. Furthermore, it would have been impossible for the witness to truthfully answer such a question, and the law does not require impossible things.

VII.

THE LAWFUL RIGHTS OF APPELLEES.

The basis of this proceeding is the petition of Hearst and the evidence he adduced at the hearings.

The wrong he sustained will be sought in vain throughout this record of many hundred pages. Even his petition did not justify the proceeding. Nevertheless the summons of the Commission were responded to, and time and expense were not spared by the defendants in the performance of their political duties; but it has been well said that political expediency in matters of judicature is a false and hollow principle. But when Hearst sought to inspect purely domestic agreements in which he had absolutely no interest and which were made with persons not parties to the proceedings appellees were justified in saying to him—you have gone so far but you shall go no farther; and so with the vouchers which pertained to the agreements; and the impossible questions relating to the domestic transaction of producing coal and selling it.

Such an attempt was a violent invasion of individual rights, which neither the circumstances nor the law justified. In Boyd *v.* United States, 116 U. S., 627, Mr. Justice Bradley adopted the thought of Lord Camden, "The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole. * * * By the laws of England, every invasion of private property, be it ever so minute, is a trespass. * * * Papers are the owner's goods and chattels; they are his dearest property, and are so far from enduring a seizure that they will hardly bear an inspection."

And Mr. Justice Bradley said: "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the Court, with its adventitious circumstances; they apply to all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of life. It is not the

breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment."

CONCLUSION.

The power granted by the Constitution to Congress over commerce between States is unquestioned.

Undoubtedly one of the chief objects sought by the framers of that instrument was uniform laws governing commerce between States, and subsequent legal and political history has proven the wisdom of that grant; but the States reserved to themselves the powers which were not granted by that instrument to the federal government, and among those powers which the States retained was jurisdiction over domestic agreements and transactions between its citizens.

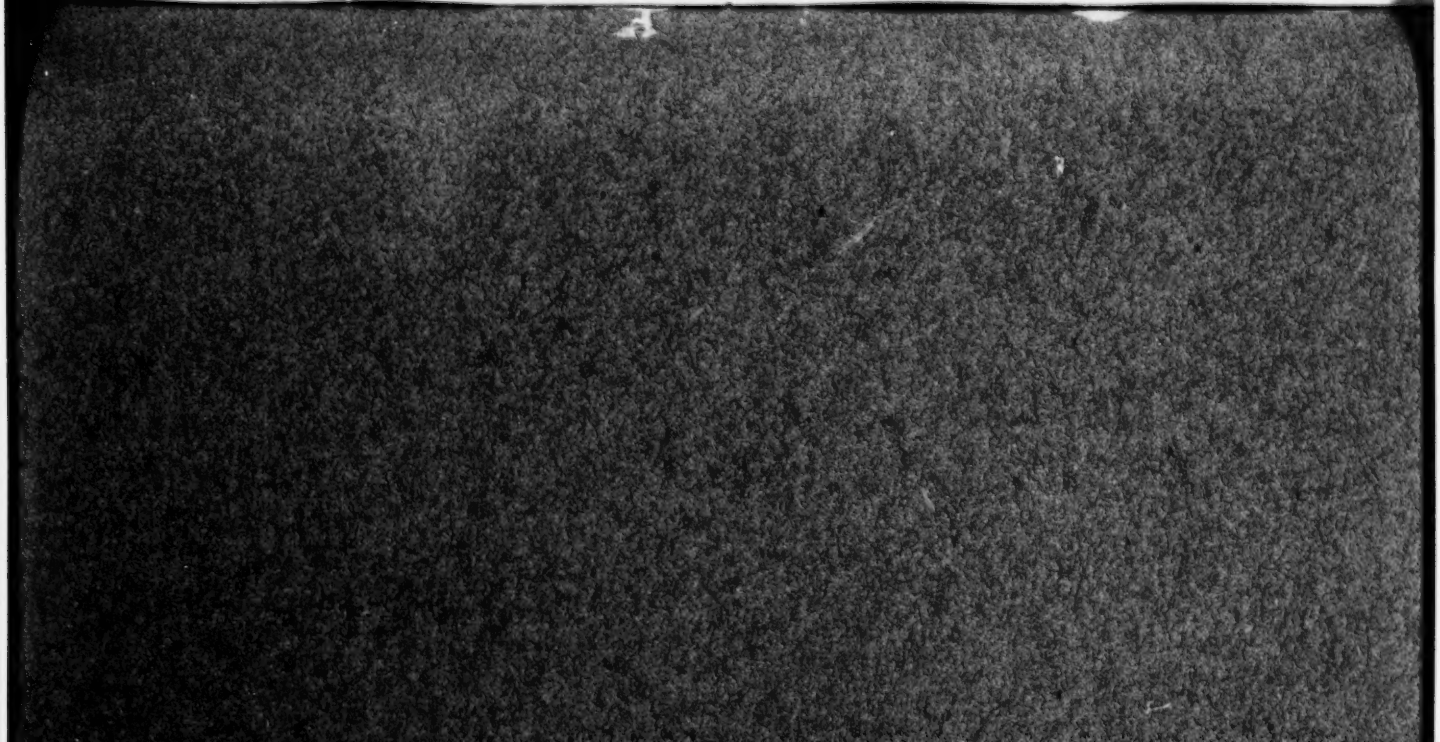
The judgment of the Circuit Court should be affirmed.

WASHINGTON, March 7, 1904.

Walter W. Ross

WALTER W. ROSS,

Counsel for WILLIAM H. TRUESDALE,
F. F. CHAMBERS,
O. C. POST,
Appellees.



In the Supreme Court of the United States,

OCTOBER TERM, 1903, NO. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

AGAINST

DAVID G. BAIRD, FRED F. CHAMBERS, GEORGE O. WATERMAN *et al.*,
Appellees.

MEMORANDUM ON BEHALF OF GEORGE O. WATERMAN, APPELLEE.

STATEMENT OF THE CASE.

On November 2, 1902, the petition and complaint of William Randolph Hearst against the Philadelphia and Reading Railway Company and nine other railroad companies was received by the Interstate Commerce Commission and filed in its office. This complaint charges the exaction of unjust and unreasonable rates on the transportation of anthracite coal; that the said rates are relatively unreasonable and unjust, and unjustly discriminative and unduly prejudicial to the interests of dealers and consumers in comparison with the rates on other traffic; that the said rates are fixed and maintained by combination and agreement; that the traffic is pooled or divided between the different railroads, in agreed proportions, and that earnings are pooled, &c. (Record. p. 39).

Each of the respondent railroad companies filled in the office of the Commission its sworn answer to the

complaint, denying, either generally or specifically, and in more or less detail, all of the essential allegations of the complaint (see Answers, Record, pp. 45–54).

Upon the issues thus joined the Commission ordered a hearing in the Post Office Building, in the City of New York, on April 21, 1903, which was continued from time to time. In the course of the hearings certain witnesses, who are the appellees here, were subpœnaed by the complainant to produce certain documents and to answer certain questions, which the said witnesses, under the advice of counsel, declined to do.

Thereafter, upon the petition of the Interstate Commerce Commission, the Circuit Court in the Southern District of New York made an order directing the various witnesses named in the petition to appear and show cause why the prayer of the Commission should not be granted, and orders entered directing the said witnesses to produce documents in question and answer the questions. Upon the return of the rule to show cause, the several respondents appeared by counsel and filed sworn answers to the petition (for answer of Geo. O. Waterman, see Record, p. 225). Argument was had, and subsequently an order was entered discharging the rule and dismissing the petition. From that order the Interstate Commerce Commission, having obtained permission of the Court below, has brought this appeal to this Court.

AS TO THE CASE OF GEORGE O. WATERMAN, APPELLEE.

The petition sets forth (Record, p. 6) that on April 22, 1903, George O. Waterman was called as a wit-

ness on behalf of the complainant, and having been duly sworn, the following proceedings took place:

"Mr. Shearn. Q. Mr. Waterman, are you the secretary of the Central Railroad of New Jersey?

Mr. Waterman. A. I am.

Mr. Shearn. Q. And have been how long?

Mr. Waterman. A. About two years.

Mr. Shearn. Q. Does the Central Railroad of New Jersey operate a railroad between the anthracite mining fields in Pennsylvania and Jersey City, New Jersey?

Mr. Waterman. A. It does.

Mr. Shearn. And has during all the time you know anything about it?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. A large part of its business is the transportation of anthracite coal, is it not?

Mr. Waterman. A. That is a very important part of it.

Mr. Shearn. Q. Do you know of the existence of a corporation called the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. In what State is that incorporated?

Mr. Waterman. A. State of Pennsylvania, I understand.

Mr. Shearn. Q. What is the business of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. Principally to mine and sell coal.

Mr. Shearn. Q. Anthracite coal?

Mr. Waterman. A. Anthracite coal.

Mr. Shearn. Q. Who is president of the Central Railroad of New Jersey?

Mr. Waterman. A. George F. Baer.

Mr. Shearn. Q. Who is president of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. The same gentleman.

Mr. Shearn. Q. Are you an officer of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. I am.

Mr. Shearn. Q. Do you know what the capital stock of that company is?

Mr. Waterman. A. About $10,000,000.

Mr. Shearn. Q. The Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. About $10,000,000.

Mr. Shearn. Q. Do you know who owns the capital stock of the company?

Mr. Waterman. A. The Central Railroad of New Jersey own a large portion.

Mr. Shearn. Q. Does it not own all of it?

Mr. Waterman. A. No, sir.

Mr. Shearn. Q. How many shares are owned by those other than the Central Railroad of New Jersey?

Mr. Waterman. A. About $1,000,000 in par value.

Mr. Shearn. Q. How many shares are there?

Mr. Waterman. A. $50 is par value. It would be about 20,000 shares.

Mr. Shearn. Q. Of the 20,000 shares, how many are owned by the Central Railroad of New Jersey?

Mr. Waterman. A. About nine-tenths of the total amount.

Mr. Shearn. Q. The balance is held by persons who qualify as directors of the company?

Mr. Waterman. A. No; owned by the Central Railroad of New Jersey.

Mr. Shearn. Q. I understand you to say nine-tenths of the stock is owned by the Central Railroad of New Jersey?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. Do you know how the balance is held?

Mr. Waterman. A. It is held by different parties, quite a number.

Mr. Shearn. Q. Are they directors of the Central Railroad of New Jersey?

Mr. Waterman. A. The directors hold some.

* * * * *

Mr. Shearn. Q. Are there any contracts in your possession or custody entered into since January, 1901, between the Lehigh and Wilkesbarre Coal Company and third parties for the purchase of anthracite coal?

Mr. Waterman. A. There were some contracts entered into.

Mr. Shearn. Q. How many?

Mr. Waterman. A. Three, as I am aware.

Mr. Shearn. Q. Since January, 1901?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. Do you know whether those contracts are still in existence?

Mr. Waterman. A. I presume they are.

Mr. Shearn. Q. They are in your custody, are they not?

Mr. Waterman. A. No, sir; not at present.

Mr. Shearn. Q. In whose custody are they?

Mr. Waterman. A. The last I saw of them they were handed to our counsel.

Mr. Thorne. They are in my custody now.

Mr. Shearn. But legally they are in his custody?

Mr. Thorne. Yes, sir.

Mr. Shearn. Q. As an officer of the Lehigh and Wilkesbarre Coal Company, you have the custody of the three contracts spoken of, have you not?

Mr. Waterman. A. I did have.

Mr. Shearn. Q. You brought them here in answer to that subpœna and have just handed them to your counsel, Mr. Thorne?

Mr. Waterman. A. That is it.

* * * * *

Mr. Shearn. Q. Please produce those contracts.

Mr. Waterman. A. They are not in my hands.

Mr. Thorne. Witness, under advice of counsel, declines to produce the contracts for the reason that they are not germane to any issue presented before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and they are contracts with third parties who are not parties to this proceeding and action, and are private business and should not be made public and disclosed in this proceeding. * * *

Comr. Prouty. Is any of the stock of your coal company on the market?

Mr. Waterman. I never saw any sales of it through the Stock Exchange.

Comr. Prouty. Is it owned by the people that own it for an investment--does it pay a dividends?

Mr. Waterman. No, sir.

Comr. Prouty. How long since it paid a dividend?

Mr. Waterman I do not remember. Not since I have been secretary—two years. * * *

The Chairman. We think you should be required to produce those contracts.

Mr. Thorne. And witness on the counsel's advice will decline to produce them.

The Chairman. And the Commission directs him to produce the contracts.

Mr. Thorne. I think that makes the record.

* * *

Mr. Shearn. You said you understood that the small fraction of the stock of the Lehigh and Wilkesbarre Coal Company that was not owned by the Central Railroad of New Jersey was held by *bona fide* investors?

Mr. Waterman. A. That would be the indication from the stock books. There are a large number of names spread throughout the country.

Mr. Shearn. Q. How many names are there?

Mr. Waterman. A. Well, from memory, I would say 70 or 75. I may be mistaken as to the number, but I think that is about the number.

Mr. Shearn. Q. Do you attend the annual meetings of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. I have attended one; yes, sir.

Mr. Shearn. Q. Did you ever see one of these 70 minority stockholders present at any meeting?

Mr. Waterman. A. At the only meeting I attended there was a gentleman that I understood was a stockholder, and I understood that he represented others."

Judge Lacombe, of the Circuit Court, in his memorandum, denying the petition as to George O. Waterman, says (p. 834):

> " In the case of George O. Waterman, Secre-
> " tary of the Lehigh and Wilkesbarre Coal Com-
> " pany, the contracts appear to be all contracts
> " of purchase only, and the petition is denied."

The Lehigh and Wilkesbarre Coal Company was not a party to the proceedings before the Interstate Commerce Commission, and the contracts which its

secretary was asked to produce were contracts for the purchase of coal made with other parties, who were also not parties to that proceeding.

It is submitted, accordingly, that the Interstate Commerce Commission had no power to require this witness, as an officer of the Lehigh and Wilkesbarre Coal Company, to produce contracts or to answer questions in this proceeding concerning the conduct of the private business of that corporation as a merchant, in the purchase or sale of anthracite coal, and the witness was within his legal and constitutional rights in declining to produce the contracts in question.

The questions in the case as to Mr. Waterman are substantially the same as those in the case of each of the other appellees for whom briefs will be filed and argument made, and, therefore, counsel for Mr. Waterman do not deem it necessary to burden the Court with a more extended argument and brief on his behalf.

IT IS RESPECTFULLY SUBMITTED THAT THE ORDER OF THE CIRCUIT COURT SHOULD BE IN ALL THINGS AFFIRMED.

ROBERT THORNE,
ROBERT W. DE FOREST,
For Appellee, George O. Waterman.

FILE COPY.

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MAR 7 1904
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

DAVID G. BAIRD ET AL.,
Appellees.

BRIEF FOR APPELLEES RICHARDSON AND STURGES ON APPEAL.

GEO. F. BROWNELL,
ADELBERT MOOT,

Attorneys for the Appellees
G. A. Richardson and E. B. Sturges.

PRESS OF "THE BUFFALO COMMERCIAL."

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

E. B. STURGES AND G. A. RICHARDSON,
Appellees.

BRIEF FOR SAID STURGES AND RICHARDSON,

Appellees.

Statement.

In form this is an appeal by the Interstate Commerce Commission. October 31, 1902, Mr. William Randolph Hearst instituted a proceeding before said Commission, alleging that the rates charged by the Philadelphia & Reading Railroad, and other railroads, for the transportation of anthracite coal to tide-water, at New York were unlawful because they were either, (1) "unreasonable and unjust," or because they created (2) "undue and unreasonable 'prejudice and disadvantage," or because they were "unjustly 'discriminating" when compared with "rates contemporan-'eously charged," or because they were (3) "pooled" freight rates. (*Petition Ex. A, pp. 39 to 42*). The railroad companies complained of made different and separate answers. While different in terms, in substance each of these answers denies each of these charges. (*Answers pp. 42 to 54*). That proceeding was tried before the Commission. During its trial appellees declined to answer certain questions and to produce certain contracts as *irrelevant* to the issues being tried, because the questions and

contracts were as to certain sales of coal at the breakers in Pennsylvania, or as to the sale of certain Pennsylvania mines to the Temple Iron Co., a corporation mining coal in Pennsylvania, or as to how the price of coal was fixed and commissions paid to coal merchants in New York. The United States Circuit Court, Lacombe, J., was applied to by the Commission to compel answers, and the production of contracts. Judge Lacombe considered the petition therefor, and answers of various appellees thereto (*pp. 1 to 229*), *inspected the contracts, not printed here,* examined over 1,500 pages of evidence already given and many exhibits, and then held that most of the evidence and contracts *sought were not "relevant" to the issues being tried, this being the sole ground of his decision.* (*See opinion pp. 832-836*). That order did not end the case. It is still undecided.

None of the appellees was a party to that proceeding before the Commission. The order appealed from is not a final order or judgment in that proceeding. It is not a final order or judgment of any court in a suit which has resulted from that proceeding. The order appealed from is a collateral supervisory order.

Since Judge Lacombe's decision the Commission have had further hearings, Hearst has given further evidence *and rested,* some of the defendants have given their evidence, others have rested because Hearst's evidence required no answer; the evidence is closed and the Commission set a day for argument.

That order is not certified to this Court upon any questions of law. No appeal from it has been taken to the United States Circuit Court of Appeals. It involves no constitutional question. The Commission waived the part of the decision favorable to its application in entering the order from which it now appeals. (*See pp. 832 opinion and 836 and 837, order*).

This appeal was not allowed by Judge Lacombe or any Judge. (*P. 842*). Judge Lacombe granted an order to show cause before this Court, August 11, 1903, during the vacation, and no appearance was then made by *appellees,* the appellees preferring to test the jurisdiction of this Court to entertain the appeal by a motion to dismiss, which has been duly noticed. We claim this appeal will not lie for the want of any statute authorizing it. If we examine the facts we shall also see the merits are with the *appellees.*

In what we shall say about the facts, the Commission's attitude, and rulings upon evidence, become important. We shall try to state the facts fairly, accurately, and as briefly as possible. The facts show an attempt to have an *unlimited investigation* into railroad and coal mining corporations, and the business of mining and selling coal, instead of a *trial of the issues on rates* before the Commission for trial. Our clients took the position that contracts for the purchase of coal at the breakers' mouth in Pennsylvania were irrelevant.

Facts.

Mr. Hearst alleges he "is of necessity a purchaser of anthra-"cite coal" (*p. 39*) but no proof of this fact was given, despite the fact that many of the answers begin by alleging that he "has no "authority to present this petition" (*pp. 43-49*), while others specifically put him to his proof "as to the necessity for his pur-"chasing anthracite coal" (*p. 45*). Mr. Hearst's counsel filed an *exparte* application to compel the production of "all contracts "* * * and books of account * * * of all *purchases* of anthracite coal * * * also *all* check and check stubs "used for coal purchased" (*pp. 54-57*). This application covered "transportation" also, but we shall soon see the vital part turned out to be the part about "purchases" and prices of coal, a subject upon which nearly all our time was spent, although the Commission has no jurisdiction over it.

In the *exparte* affidavit filed in support of this application the most the attorney for Mr. Hearst could swear to was, "that the "contracts called for are ostensibly *contracts for the purchase of* "*anthracite coal* from mine owners or operators" (*p. 58*). Without even giving the railroad companies a chance to be heard upon this application (and not withstanding the decision of the commission itself written by Cooley, Ch., while a member of the Commission holding that a subpoena *duces tecum* should not issue requiring the production of "certain contracts for the sale of "coal * * * unless their bearing upon the controversy is "manifest," because "third persons have rights in such contracts," and such parties "certainly lose no rights by reason of being "strangers to the proceeding"—*opinion, Haddock case, 3 I. C. R.*,

312, 313), the Commission ordered the subpoena *duces tecum* to issue, it was issued and served, and the service thereof is made the basis of the application by the Commission for the order refused by Judge Lacombe (*p. 3*).

We should now note that such subpoena, *duces tecum*, was not asked for in aid of a general investigation by the Commission under Sec. 12 of the Interstate Commerce Act. It was asked for because the railroad companies had denied the charges of the petition, thus putting them in issue. Thereupon, as the Commission allege in their petition for the order herein, the Commission "ordered a *hearing* upon said complaint" (*p. 2*). So the application for the subpoena was made because of "the *hearing* "set in the above entitled matter" (*p. 54*). The matter so set for a "hearing" being one before the Commission where the election of Mr. Hearst to bring it precludes a suit in equity by him for the same matter (*Sec. 9*), the Commission were confined to "the matters complained of" (*Sec. 13*), and could only decide that matter, because, if the "common carriers" thereupon gave the "complaining" party "satisfaction" before the "hearing," the Commission were to so record the fact, and the common carrier would be thereby relieved "from further liability" (*Sec. 15*). The Commission's charter thus shows Mr. Hearst had no standing before the Commission to maintain the proceeding as a substitute for a suit in equity unless he proved a case in equity.

Nevertheless neither the counsel for the petitioner, nor the Commission, observed these provisions of the statute as to such proceeding and the scope of the "hearing" appointed. The Commission disregarded the provisions of the statute, that expressly deprive them all jurisdiction over all matters involving the "receiving, delivering, storage, or handling of *property*, "wholly within one state" (*Sec. 1*), which certainly covers wholesale or retail *sales* of mines, corporation stock, or coal, "wholly within" Pennsylvania, or "wholly within" New York, and all details thereof, such as issuing monthly price circulars, fixing prices, giving security, or guarantees of security, and the like. Instead, the Commission insisted upon contracts and oral testimony as to *sales of mines and coal "wholly within one state."* The act could not and did not confer jurisdiction as to such matters.

Not regarding these limitations of the act, counsel for Mr Hearst opened the hearing April 21, 1903, by calling upon the witnesses subpoened to produce "the books and papers called for" (*pp. 229, 230*). Of course they were not produced at that time. Then followed counsel's opening. He stated that *three* proceedings had been started by Mr. Hearst, and that one was when he sought to have the "United States District Attorney "and the Attorney General of the United States * * * set "in motion the machinery of the law," but despite "evidence" this proceeding, or application was, "for some reason or other, "buried at Washington for many months" (*p. 237*).

That the *second* was when "Mr. Hearst turned to this forum * * * "*recollecting it had to do with the institution of every proceeding that* "*has taken place under the Sherman anti-trust law* that has "amounted to anything" (*p. 237*). (Surely this is strange, if true, because long ago in its written request to the United States Attorney General for an opinion, *the Commission argued that* "*it* "*is not in the province of this Commission to determine whether the* "*testimony * * * shows a violation of the anti-trust law,*" and Attorney General Griggs pointed out to the Commission that the Sherman anti-trust law was not intended to prevent numerous railroads from advancing freight rights, at the same time after consultation with each other; also that such advance shows no "contract" or "conspiracy" * * * in restraint of interstate "commerce." (*See: Annual Report I. C. C., 1899, pp. 16, 19.*)

The third proceeding was one before the Attorney General of New York under the so called Donnelly anti-trust act of that state. (*See: Report Attorney General, N. Y., for 1903, not yet printed.*)

Counsel thus stated the purpose of the proceeding before the Commission; "we propose to go into that (combination) just as "thoroughly as we may to develop all the facts at our disposal so "that this Commission shall * * * certify its findings to the "Attorney General of the United States for such action as he "deems proper to take" (*p. 239*). Counsel concluded: "Now, "all these facts * * * present an *irresistible case of combina-* "*tion in restraint of interstate commerce which is within the Sherman* "*anti-trust law* and the law under which your body was organized, "not only confers upon you power, *but imposes upon you the duty* "*of investigating* the conduct of the business of common carriers

"*We ask you to make such an investigation here, and * * * a thorough one.*"

Here we have the gist of this case. The Commission was asked to "investigate" as to alleged anti-trust matters not committed to their jurisdiction, or, as the Commission put it in 1899, "not in the province of the Commission to determine." Did the Commission repel the charges made against a superior branch of the government, or even refuse to enter upon an unlimited "investigation" they had already declared to be "not in the "province of the Commission to determine"? No. Did it sustain counsel for the railroads, in objecting to such an "investigation"? No. Did it enter upon such an "investigation"? Yes. Its very petition for the order refused by Judge Lacombe repeats again and again, as to various witnesses and contracts, "your petitioner "was engaged * * * in the discharge of its duty * * * "and in the exercise of its authority *to inquire into the manage-* "*ment of the business of common carriers * * * and to keep* "*itself informed as to said business * * * and your petitioner* "*is of the opinion that said contracts are* not only material and "relevant to said issues on trial in said proceeding, *but * * *** "*the production thereof * * *** is necessary to enable your "petitioner to discharge its duty * * * *and to inform* your "*petitioner as to * * * the business of said common carriers*" (*See pp. 14, 20, 29, 37, 38*). In the brief of Mr. Solicitor General Hoyt to advance this case it is said the "contracts" and evidence sought are necessary "to the determination of issues in a pend-"ing cause before the appellant, and * * * *to inform appel-* "*lant as to * * * the method in which the business of common* "*carriers is conducted and to enable appellant to obtain the full and* "*complete information necessary to * * * perform the duties* "*** * * *for which it was created.*"

Here we have it! The Commission ask the courts to aid them in a general "thorough investigation" such as counsel for petitioner sought!

Judge Lacombe held that the Commission were not at liberty to go upon such a fishing excursion because they were confined to the "hearing upon said complaint" which they had alone ordered (*p. 833*). Upon the hearing, however, neither counsel for

Mr. Hearst's Exhibits nor the Commission, so viewed the matter. Instead numerous exhibits, not filed, or printed here, were put in evidence to show that the railroads have a large income (*Ex. 5, p. 264*); their average freight (*Ex. 6, p. 266*); their gross freight (*Ex. 7, p. 269*); and that the gross earnings per mile for all railroads for the United States were $8,123, while for the railroads complained of the gross earnings were, per mile (*p. 271*):

Reading, . . .	$27,572	Lehigh, . . .	$17,567
D., L. & W., . .	27,516	C. of N. J., . .	21,829
Ontario & W. .	11,078	D. & H., . . .	17,691
Pennsylvania,	25,527		

It was insisted that, without proof of similarity of condition, such evidence and such comparisons were no more competent as to rates upon coal than would be like evidence and comparisons of *gross earnings* of common wagoners all over the country, where like disparities appeared, but the Commission ruled otherwise (*Ex. 8, pp. 271-272-273*). Other schedules were put in evidence comparing operating expenses and gross income (*Ex. 10, p. 277*); the proportion of loaded cars (*Ex. 11, p. 277*); the average freight tonnage per engine (*Ex. 12, p. 278*); the average haul per engine (*Ex. 13, p. 278*); the average number of tons per mile (*Ex. 14, p. 279*); the percentages of expenses for maintaining way and structure (*Ex. 15, pp. 279-280*); the average of fuel consumed per ton per mile (*Ex. 16, p. 280*); but all these exhibits showed such striking differences between the various railroads, as between themselves, and as to all the railroads of the country, that they failed to establish any fact of any importance.

Next was offered an exhibit purporting to show the cost of hauling freight, obtained by multiplying the rate by operating expenses, according to counsel. This exhibit would have been valuable as settling a point unsettled by the ablest and most experienced railroad experts like Mr. Albert Fink, but it turned out to be so incompetent that the Commission could only permit it to be marked for identification (*Ex. 17, for identif., p. 280*). Exhibits 18, 19, 20, 21 and 22 to show tonnage, coal tonnage, stock and debt, shared the like fate for the same reason (*pp. 280, to 287*). From the argument of counsel in support thereof this Court can see how the various railroads differ in stock

and debts, and how incompetent such exhibits must be as to rates unless they are made competent by other proof (*pp. 284-285-286*). Then began the struggle to investigate still further a field, and to put in evidence contracts for the sale of coal at the "breakers" in Pennsylvania (*p. 287*). Mr. Gowen stated clearly some of the reasons why they were irrelevant (*pp. 295 to 297*). Commissioner Prouty said: "It is conceivable that the testi-"mony might be admissible as not interfering with rights of "third parties, *when the contract might not be*, and would it not "be well for you to have a witness here and ask him those ques-"tions and let the whole thing go up at once" (*p. 300*).

He also said: "You have declined to produce the contract "and we have received the secondary evidence" (*p. 373*). He also said: "*If the material thing were what* the contract was, or "what was done under that contract, it would be another ques-"tion. *That is not directly in issue*" (*p. 375*). Mr. Gowen was therefore justified in respectfully declining to produce the contract as "totally irrelevant" (*pp. 298-9*). Other counsel, *including counsel for these appellees*, took the same position as to contracts and questions each and all of which are specified and covered in the opinion of Lacombe, J., (*pp. 832 to 836*). The Commission had its attention called to the opinion of Cooley, Ch., in the *Haddock case, 3 I. C. R., 312-313, as to such contracts for the purchase of coal*, by Mr. Ross but refused to follow it (*p. 302*). Mr. Thorne also well stated the reasons why the contracts were not produced (*pp. 307-8*). Judge Campbell rested his objections for the Reading upon the validity and private and domestic character of the contracts involved (*pp. 349-353*). *As to the Temple Iron Co. contracts*, Mr. Davies stated the points fully (*pp. 351-2*). Mr. Brownell did the same (*pp. 357-8*). So forcible were these reasons that the Commission ruled: "The Chairman—'We are not "free from doubt upon this question. We are constrained to "hold, *in view of the statements of complainant's counsel*, that "further evidence will be produced in connection with the con-"tracts in question, that this objection should be overruled. *Of "course as the evidence stands now it is clear the contracts are not "admissible.*'" Mr. Brownell pointed out "the rates have been "in force a great many years * * * have lowered during "the past fifteen years" (*p. 359*). This being undisputed it can

be seen, as was then pointed out, that the Temple Iron Co. contract made February 27, 1899, as to a mining corporation, which corporation was organized by a statute of Pennsylvania, March 22, 1873, could not have caused or influenced the rates in question, although the Commission ignored this fact (*pp. 365-6*). *No evidence was afterwards given to make these Temple Iron Co. contracts admissible that the Commission then ruled were clearly "not "admissible."*

The reason why counsel was so insistent upon going into the contracts and everything, however irrelevant, is shown by his own statement. He said: "*My theory is that this* (*purchase con-"tract*) *method of doing business should be broken up*" (*p. 386*).

So this declaration shows the intent to destroy the Pennsylvania purchase contracts. One of the contracts of coal purchase in Pennsylvania was read in evidence by counsel (*p. 377*) *and he also requested Mr. Jermyn to produce one, he sent one to the Commission, and that was put in evidence* (*pp. 406–766, 767, Ex. 35*).

The Commission allege it is "identical" with those not produced and that was not disputed (*pp. 14–17*). These contracts were purchase contracts "*to deliver on cars at breaker*" (*pp. 15–767*).

There was another form of contract used by the Ontario Ry. alone, a "transportation" contract, but that was produced without objection and put in evidence (*p. 809–811*).

The Temple Iron Co. charter and contracts were not only submitted to the Commission for inspection, as were the other contracts, but they were submitted to Lacombe, J. and may be found annexed to the answer of Mr. Baer herein (*pp. 65–93*).

It thus appears that the evidence now sought is at most merely cumulative evidence. The other contracts are sought for purposes merely inquisitorial.

There is very little evidence in the record really relevant upon whether the rates are (*1*) "*unreasonable and unjust,*" (*2*) "*unjustly discrim-"inating,*" *or* (*3*) "*pooled.*" The remaining exhibits are the charter of the Temple Iron Co. (*Ex. 24, p. 525, printed p. 65*); annual report of the Reading (*Ex. 25, p. 586*); tables of the Reading (*Ex. 26, p. 587*); charter of the Hillside Coal & Iron Co. (*Ex. 27, p. 607*); annual reports of the D. L. & W. R. R. (*Ex's. 29, 30, 31, 32, p. 669*); price circular of the D. L. & W. R. R. (*Ex. 33, p. 671*);

Ruly's table of prices for which coal sold at New York tide-water (*Ex. 34, should be p. 727*); Jermyn contract for sale of coal at Pennsylvania breaker, (*Ex. 35, p. 767*); Ontario Railroad contracts for transportation coal (*Ex's. 38, 39, 40, 41, p. 815*); annual reports Ontario Railroad (*Ex's. 42, 43, 44, 45, p. 829*). These very exhibits show that the counsel and commission were not limited to the field prescribed by statute or issues. The oral evidence shows this fact still more clearly. After Mr. Baer had been examined by the counsel for Mr. Hearst for two days and a half at different times a short dialogue shows what the Commission thought about his examination.

We quote it. "*Commissioner Prouty: There has been very little "said in your examination about the unreasonableness of this rate on "coal,* and I will sometime before the case is closed want to ask "you some questions on that * * *"

"*Mr. Baer:* I would be glad if you will do that * * * I "will be very glad to come" (*p. 590*). All that was in fact said by Mr. Baer on the rate on coal was volunteered, and showed that rate reasonable, fair, and not pooled (*pp. 185-188-191, 192, 193*).

Mr. Baer came back and Com. Prouty examined him but his evidence had more to do with industry generally (*p. 771*); dense traffic (*p. 772*); earnings (*pp. 773 to 775*); debt (*p. 776*); interest and rents (*pp. 777 to 778*); bridges (*p. 779*); capitalization (*p. 780*); reports (*p. 781*); equipment (*p. 783*); fixed charges (*p. 785*); competition (*pp. 786, 789, 792*); price (*p. 787*); bond-holders (*p. 791*); than rates (*pp. 793 to 795*). He went into wages increase caused by the strike (*p. 796*). Com. Prouty said at the time: "*I "am not trying to show that your railroad rate on coal is unreasona-"ble. What I am trying to show now is that it is a matter entirely "immaterial to the Reading Company, whether you make the rate $1.00 or $1.50 a ton*" (*p. 790*). Surely then it was an investigation of *price*, not a trial about rates, that the Commission was hearing.

Mr. Thomas was subjected to the same kind of an examination, but not so lengthy. What were these witnesses questioned about? How did they fill this bulky record? The Court will have to read it to appreciate the "thorough investigation" had. We may help by giving a birdseye view of the witnesses.

Witnesses.

Mr. Waterman, Secretary of the New Jersey Central Railway, was asked about the ownership of the corporate stock and about the general business of the Lehigh & Wilkesbarre Coal Co., a coal mining and selling corporation of Pennsylvania, not a party here (*pp. 305, 308, 309*); about the anthracite terminals of the New Jersey Central Railway (*p. 306*), and about whom the said Lehigh & Wilkesbarre Coal Co. had purchase contracts with (*p. 327*); and, while he answered these questions about the purchase contracts of parties all of whom were strangers to the proceedings, he refused to produce the contracts (*p. 307*).

Mr. Brown, Secretary of the Philadelphia Coal & Iron Co., a coal mining corporation of Pennsylvania, told of the ownership of the stock of that corporation, and of the Reading Company, (*pp. 315, 316, 317*); and of said coal company's coal purchase contracts (*pp. 318, 319*); but declined to produce them (*p. 319*).

Mr. Taylor, Secretary Philadelphia & Reading Railway Co., testified that company had no transportation contracts (*p. 320*); told who its officers were (*p. 320*).

Mr. Safford, is an employee of Coxe Bros., the largest independent operators. He told of unloading bituminous coal at Port Richmond (*pp. 321, 322*); of the necessity for keeping different kinds of anthracite coal separate, and making it more expensive to switch (*pp. 323 to 326*).

Mr. Weston worked for the Philadelphia & Reading Railway many years before (*p. 327*), and knew something of the cost of putting that coal on vessels then, but not much else (*pp. 327, 328, 329*). He has not been in the business for sixteen years (*p. 329*); and knows the methods of handling coal have been much changed since (*pp. 330, 331*).

Mr. Olhausen, once Superintendent of the New Jersey Central Railway (*p. 322*): thinks there is "very little difference" in unloading bituminous or anthracite coal by present methods (*p. 333*); has become more favorable to the railroad view since he was a witness for Coxe Bros. years ago (*p. 334*); says many anthracite mines cannot use large cars (*p. 335*); and more can be used for bituminous coal (*p. 336*).

Mr. Wilson, auditor Lehigh Valley Railway Co., tells of railway books (*p. 327*); and who would know of railway freights (*p. 339*).

Mr. Hebbard, secretary Guaranty Trust Co. of New York, tells of Temple Iron Co. contracts (*p. 343*); but refuses to produce them by advice of counsel Mr. Davies (*p. 367*).

Mr. McAnulty, Scranton merchant, connected with the Connell Coal Co. and Melville Coal Co. (*p. 368*); tells of effort Simpson & Watkins and others to build independent railway in 1899 (*p. 369*); of 60 per cent. basis coal purchase contracts there (*p. 370*); of negotiations for more favorable coal purchase contracts which resulted in increasing mine payment to 65 per cent. (*pp. 371–381*); and is still an independent dealer (*p. 380*).

Mr. Skeele, sales agent Lehigh Valley Coal Co., tells of salaries self and men are paid (*pp. 383, 384*); puts cost sale approximately at 10c. per ton (*p. 387*); wastage at 15c. per ton (*p. 388*); says coal company fixes price coal (*p. 390*); declines to go into details about price circulars under advice of Mr. Gowen (*p. 391*); gives market price of coal (*p. 392*); says railroad weights govern in putting coal on boats (*p. 394*); and that prices have been maintained better last six years (*pp. 395–396*).

Mr. Dewitt, New York coal merchant 30 years (*p. 396*); compares prices 1895 to 1902 (*p. 397*); tells of coal circulars of Reading and prices (*p. 398*).

Mr. Burns, New York coal merchant 25 years; says coal scarce two or three years and uniform price (*p. 398*); tells of price circulars received from various companies (*pp. 399, 400*); tells of amount and quality handled (*pp. 400, 401*).

Mr. Jermyn, Scranton independent coal operator (*p. 403*); gets 65 per cent. tide-water price at breakers and has for New York coal since 1900 (*p. 404*); used to sell for less (*p. 407*); majority independents sell for 65 per cent. prepared sizes; 50 per cent. pea; 40 per cent. buckwheat (*p. 408*); gives prevailing prices at tide-water (*p. 409*); tells different railroads to their different "breakers" (*pp. 410, 411*); gives increases wages miners (*p. 412*); says mines cannot be run full capacity from difficulty in getting miners to work (*pp. 413, 414, 416*); says market price depends on

demand (*p. 418*); sends his contract to Commission for evidence and it becomes *Ex. 35* and is printed (*p. 767*).

Mr. Baer, President Reading R. R. The examination of this able lawyer and candid witness takes such a wide range and, is, generally speaking, so entirely outside of the issues, and so full of general information that it cannot be summarized but must be read. *It even covered his opinion of Hanna and the strike of 1900!* (*p. 545*). We have already referred to some of it on rates (*pp. 188–193*; *also see pp. 420–444*; *524–591*).

Mr. Thomas, the testimony of former President Erie R. R., now President Lehigh R. R., takes almost as broad a range outside rates as does Mr. Baer, and must also be read for the same reason. He testified a little on rates (*see pp. 591–634, especially 617–618, 523–629, 632*).

Mr. Chambers, Secretary D. L. & W. R. R., tells of purchase contracts for coal but by advice of Mr. Ross refuses to produce them (*pp. 444–446, 448*); says these are not transportation contracts (*p. 447*).

Mr. Post auditor of the D. L. & W. R. R. tells of vouchers for coal purchases, (*p. 449*); which he declines to produce by advice of Mr. Ross (*p. 454*).

Mr. Sturges, Scranton, attorney and coal merchant, the appellee (*pp. 455-459*); tells of coal purchase contracts he declines to produce by advice of Mr. Brownell (*p. 457*); also of attempt in 1899 to build another railroad (*pp. 460-466*); also of negotiations for 65 per cent. contracts (*p. 466*); tells why anthracite coal must remain of high price (*pp. 469, 470*); tells prices in New York during coal famine (*pp. 472-474-477*); gives railroads credit for keeping down prices then (*p. 475*).

Mr. Howe, Philadelphia, tells of negotiations for 65 per cent. contracts and why changed conditions required higher prices (*p. 482*).

Mr. Edmonds, sales agent, Reading Coal & Iron Co., tells amount sold in New York by that company (*p. 483*); sales office expense (*p. 484*) of wastage of 1½ per cent. (*p. 486*); of how prices are fixed and circulars issued (*pp. 488-490-492*) of prices (*p. 491, 496*); of Ruley's report of sales of all companies (*p. 494*);

where New York tide-water coal goes (*pp. 495-506*); of competition for customers (*pp. 496-505-507-510*).

Mr. Richardson, Secretary Erie Railroad, appellee, was not sworn, but we agreed he had been subpoened to produce purchase contracts. He delivered the contracts to counsel, who had them in court, but who respectfully declined to produce them when requested so to do by the Commission (*pp. 311-314*).

Mr. Meeker, an independent coal merchant of New York, buys the majority of his coal on the 65 per cent. basis, or has since November, 1900. When coal is as low as $4 at tide-water, it only leaves $1.40 to pay transportation charges (*p. 511*). Prior to November 1, 1900, he adjusted his transportation charges with the Lehigh at the end of the month by rebates, but since that time he has paid a rate of $1.55 (*p. 513*). When coal gets as low as $4 in New York, so that transportation charges cannot be paid and money made, he does not bring prepared sizes to the New York market, but sends it "to other markets" (*p. 514*). He takes the same price as the railroad coal companies if he cannot get more (*p. 516*). When the rebate method of fixing rates was used, previous to November of 1900, "everybody," "all shippers," were treated alike (*p. 635*). Sometimes the rebates work out less than the tariff rates (*pp. 637–639*); sometimes more (*p. 640*). His rebates were the result of a contract made in January, 1892, with coal companies, from which he would not release them (*pp. 641–642*). There are hundreds of men in the coal business who buy coal *where they can get it the cheapest* (*pp. 643, 644*).

Mr. Heilner, sales agent of the Lehigh & Wilkesbarre coal company ten years (*p. 517*); President of his company fixes his price (*p. 519*). Price increases 10 cents a month from April to September (*p. 530*). (This is done as Mr. Baer and others tell us, to induce people to buy coal in the summer months, thus enabling the railroads to move their coal to market during the entire year with some regularity, instead of moving it as was once done, in a rush when winter sets in.)

Mr. Runyon, an independent coal merchant of New York (*p. 644*), tells of the cost of putting coal on board (*p. 645*).

Mr. Ruley, a statistician and publisher of New York, tells of the companies that send him figures each month showing the amounts sold and the price realized on each size (*pp. 645, 646*). These statistics furnished the basis upon which the miners were paid under their contracts, which provided:

"The general average f. o. b. prices herein referred to shall be "determined by a disinterested expert accountant satisfactory to "both parties * * * and the accountant each month "shall make a true average price for *each size sold at tide on all* "*the coal from the same region*, and the average prices thus "obtained shall be furnished by the accountant to the buyer and "sellers by whom they shall be accepted." (*Pp. 648–751; con-* "*tract p. 769.*) "Those statistics have been kept for over 30 "years; I have been doing it for thirteen years" (*p. 647*).

Later, the witness was recalled and furnished these statistics of the different companies, and for Cox Bros. & Co. under these contracts, and they were put in evidence (*pp. 726, 727*). This exhibit furnishes, in authentic form, all the necessary evidence as to the value of coal, or as to what the railroad coal companies get out of the 65 per cent. contracts. It further appearing from testimony to which we have referred that the independent operators also buy and sell on this 65 per cent. basis, it is readily seen that so far as value and the quantity sold are concerned in the rate, these authentic figures furnish controlling evidence. The amount sold at New York, tide-water, is about 20 per cent. of the entire country, or about thirteen million tons as a maximum.

The exhibits, and the examination of the witnesses from them, show striking discrepancies in the prices obtained in the New York market, even during the strike, when coal was scarce, and show how powerless are the railroads to control such a great market, when 30 per cent. of the coal sold is produced and sold by independents (*pp. 728–736*).

Mr. Payne is an independent operator of Kingston, Pa. (*p. 651*). He has a switch of his own connecting two railroads, has no contract with the railroad coal company, but sells on the "basis of "prices realized for at tide" (*pp. 652, 653*).

Mr. Truesdale is the President of the D. L. & W. R. Co. (*p. 653*).

Mr. Truesdale's testimony covers part of the same ground covered by the testimony of Mr. Baer and Mr. Thomas, and, like their testimony, cannot be summarized, but must be read, for it is a discussion of everything, from the foundation for coal rates to the details of railroad management.

Under the advice of Mr. Ross, Mr. Truesdale refused to produce the coal purchase contracts of his Company, or to give evidence touching the prices, etc. (*pp. 653 to 698*). He also makes clear why an advance of ten cents a month from April to September resulted to the advantage of producer and consumer alike (*p. 681*).

Mr. Peters, is a member of the firm of Williams & Peters, who are coal merchants handling large amounts of coal on commission, and producing on their own account (*p. 698*). He was questioned in detail as to the method of doing business, and also as to prices. He told of the methods and customers, but, under advice of counsel, he declined to reveal what commissions his firm received, or the details of their business (*pp. 698 to 710 and 737 to 743*). At first, the Commission sought to compel him to answer the questions declined (*p. 37*), but upon reading his answer to the petition of the Commission (*p 100*), the counsel for the Commission was instructed to withdraw the application as to Mr. Peters, and the order discloses that it was withdrawn (*p. 837*).

Mr. Olyphant, formerly president of the Delaware & Hudson (*p. 710*), tells of its coal business, and his observations with reference to exhausting the coal supply, coal strikes, and like matters (*pp. 714, 715, 716*): also about the law of supply and demand (*p. 721*).

Mr. Kemmerer, an independent coal operator of Philadelphia and New York (*p. 743*), says the price of coal at tide-water cuts no figure with them, because their coal "goes largely to line points" (*p. 745*). He pays the regular rates (*p. 745*). Only the surplus coal is shipped to New York (*p. 746*). He can never get a rebate (*p. 748*). They handle bituminous and anthracite, and when there is a change in price circulars are issued announcing

the fact (*p. 752*). The published rate is what is paid for transportation (*p. 754*).

Mr. Peale, is an independent coal merchant of New York. He has paid the regular rate for years (*p. 758*). They also advance their price ten cents a month (*p. 759*). There are a large number of independent dealers (*pp. 760, 761*).

Mr. Herbert, is an independent coal merchant of New York. During the strike they made arrangements to operate a mine, that they might supply their customer, The Manhattan Elevated (*pp. 763, 764*).

Mr. Harris, formerly president of the Reading (*p. 797*), tells of a meeting in 1896 where it was found—

"Looking to the history of all the roads for ten or twenty "years, we found that whether we were working in reasonable "agreement, or whether we were working against each other, it "came to about the same thing * * * "stop fighting." (*pp. 798, 799*).

"The understanding was * * * the percentage to which "we were entitled. *Neither we nor anybody else stopped at that "line*" (*p. 799*).

Mr. Henderson, Second Vice-President Philadelphia & Reading Coal & Iron Company (*pp. 799 to 805*) gave no testimony of importance at the hearing before Judge Lacombe, although he was examined after that hearing in detail.

Mr. Childs, General Manager of the N. Y., O. & W. R. Co. (*p. 805*), tells where their railroad taps the coal country, where 12,000 acres were situated, and how much coal they produce (*pp. 805, 806, 807*). He gave in evidence a *transportation* contract with the Elkfield Coal & Iron Company (*p. 809*), and testified concerning other contracts of like character (*p. 814*); also concerning prices (*pp. 820-822*), the grades of their railroad (*p. 824*), the proportion of cars that go back empty (*p. 825*), and gave some reason why anthracite should pay a higher rate than bituminous (*pp. 827, 828*).

Of course this testimony does not include that given after the hearing, before each party rested, the evidence was declared closed, and the Commission set a day for hearing the closing

arguments. *Presumptively that evidence covered all issues or subjects before the Commission.* This shows, however, what Judge Lacombe had before him in the way of exhibits and evidence from which to determine whether or not the contracts sought in the questions put but not answersd, were relevant. The more this Court looks into the record, the more we believe it will be convinced that Judge Lacombe was right in concluding that the evidence sought was not relevant, either upon any primary issue or any secondary issue before the Commission. We shall stand largely, therefore, upon this review of the exhibits and evidence, and the opinion of Judge Lacombe, and the very character of the questions set forth in that opinion, to sustain us in our claim that the evidence sought is not relevant, unless this Court shall be of the opinion that the Commission has unlimited power, *in the Hearst proceeding*, to investigate as to coal mining, coal corporations, and coal selling. We have given this brief review of all the evidence because the coal purchase contracts sought from Mr. Richardson and Mr. Sturges, the appellees who are our clients, are of the same general character as those sought from many of the other appellees; also because we hope our brief review of the exhibits and testimony in this bulky record will be of some assistance to the Court in its consideration of this case.

POINTS.

I

This appeal should be dismissed for want of any statute authorizing it.

This case is not unlike the case of a "supervisory" order in bankruptcy proceedings, that is not a final order (*Wisall vs. Campbell, 93 U. S., 347*; *Cauro vs. Crane, 94 U. S., 441*); or an order dissolving an injunction pending suit, (*McCollum vs. Eager, 2 How., U. S. 61, 64*); or the case of a *discretionary* order refusing to open a decree (*Brockett vs. Brockett, 2 How., 238, 240*); or an order refusing to let one intervene as a party (*Ex Parte Cutting,*

94 U. S., 14). The ground of these and like decisions is that the order appealed from does not dispose or affect the main proceedings upon the merits. *So here the main proceeding is still pending and not decided.* As the Commission can render its decision therein upon the merits upon the evidence before *and afterwards given*, by both parties, the order complained of is merely interlocutory, and so no appeal from it will lie (*McGourkey vs. Railway, 146 U. S., 536, 545*). Furthermore, all the relevant facts being proved and undisputed, and the evidence sought to be adduced, at most, merely cumulative, this Court should apply the same rule here it does in other cases where there is "some" evidence, and should hold that this, "being a matter "resting in the discretion of the trial court, the action that court "in the premises is not assignable for error" (*VanStone vs. S.&B. Mfg. Co., 142 U. S., 128, 134*).

Moreover, the rules of this Court expressly require the exhibits to be printed; this has not been done here, and without them this Court cannot say that Lacombe, J., with all the evidence and those exhibits before him (*p. 38*), was not justified in his decision; for the presumption is that his decision is correct.

Finally: We have filed a brief to dismiss this appeal, reviewing the statutes and their construction and have shown therein that in the prior statutes, or in the amendments of 1903, there was no intent to permit a direct appeal to this Court in collateral and interlocutory proceedings of this character.

The history of the amendments of 1903 shows as much. They are results of the numerous so-called anti-trust acts that were proposed. January 21, 1903, the Elkins bill was introduced into the Senate by Senator Elkins whose name it bears. January 27 it was reported back with amendments. February 3 it was further debated, amended and passed by the Senate. As passed it authorized the Commission when it has a "belief" that a "common carrier" is carrying "passengers or freight * * * "at less than the published rates * * * or committing any "discriminations" to "present a petition alleging such facts to "the Circuit Court of the United States sitting in equity" and that the Court shall "summarily inquire into the circumstances" and "being satisfied of the truth of the allegations * * *

"said Court shall inforce the published tariff," etc. As passed it also contains the words: "The said Court shall have the power "to compel the attendance of witnesses * * * and to com- "pel the production of all books and papers relating" to "*the* "*matter in controversy*" * * * *such transaction.*" February 4 the bill went to the House and was referred to its committee. February 12 it was reported back with the following amednment: *The so-called expedition act to expedite important government suits like the Northern Securities case had then already become a law February 11, 1903.* The act appropriating $500,000 for counsel and expenses in important government suits was also passed February 4, 1903.

The report of the House Committee of Interstate and Foreign Commerce made February 12—amended the Elkins act after the other acts had thus become laws. That report concludes as follows:

"Insert in the'end of Section 3 the following:

"'*Provided*, That the provisions of an act entitled 'An Act to "expedite the hearing and determination of suits in equity pend- "ing or hereafter brought under act of July 2, 1890,' entitled "An Act to protect trade and commerce against unlawful re- "straints and monopolies,' 'An Act to regulate commerce' "approved February 4, 1887, or any other acts having a like "purpose that may be hereinafter enacted,' *approved February 12,* "*1903*, (should be February 11), shall apply to any case prosecuted "under the direction of the Attorney General in the name of the "Interstate Commerce Commission.'"

Why was this proviso suggested? Was it proposed to cover and expedite appeals in purely collateral and "supervisory" proceedings like the one under discussion, or was that amendment *intended* only to reach and cover suits in equity brought by the Commission in the United States Courts? Is the word "case" used in the act in the common synonymous sense of a "suit" or in some other sense?

Let the House Committee on Interstate Commerce speaking with full knowledge of the Acts already passed February 4 and February 11 answer these, questions in language that is conclu-

sive. The committee in its report of February 12, says of the above quoted words:

"The last amendment is for the purpose of giving to **suits** *com-*
"*menced in the name of the* **Interstate Commerce Commission**
"the benefit of an early hearing and disposition *in the same*
"*manner* as is provided for **suits** commenced *in the name of the*
"**United States** *by the recent act.*" (*See Report No. 3765, 57th Congress, 2d Session*).

This Court will observe that the appropriation of February 4 and the Expedition Act of February 12, only *applied to suits brought in the name of the* **United States**; hence the significance of the language of the proviso.

While such a report will not prevail if the language of the act is too clear to permit of a construction in harmony with it, if such act can be construed in harmony with it, it should be so construed. We must look at the "history" and the objects of such legislation to get at its intent. We must assume a sensible object; here a sensible object is stated by the report of the committee. That report has great weight. (*Am. N. Twine Co. vs. W., 141 U. S., 468-474*). It would be unreasonable to give the word "case" a broader or different meaning than the meaning the committee gave to it under such circumstances. The report shows the intent of the Congress, and that intent is the heart of this matter. The true rule is: "A thing may be within the letter of the "statute and not within its meaning; and within its meaning, "though not within its letter. *The intention of the law-maker is* "*the law.*"

Justice Swayne in *Smythe vs. Fisk, 23 Wall., 374-380*, approved *Hawaii vs. Mankichi, 190 U. S., 197-212*. Does the *Brimson Case, 154 U. S., 447*, require a different ruling? It does not. Why? Because that was not a case like this one, of issues being tried before the Commission. That was a case of an investigation by the Commission upon its own motion under Section 12 of the Act. If the Commission could not get aid from the courts to force witnesses to answer "*relevant*" questions, in such a case it was near its practical end. Judge Gresham decided against the Commission on that point. The Commission was legally

aggrieved thereby. In that case an examination of the original record shows the order itself "doth find that so much of *Section* "*12 of the Act known as the Interstate Commerce Act* as authorizes "or requires the courts to use their process in aid of inquiries "before the Interstate Commerce Commission, *is unconstitutional* "*and void* * * *. *And it is therefore ordered* that said appli- "cation or petition be * * * dismissed from which decision "* * * the District Attorney * * * on behalf of the "* * * Commission * * * by direction of the Attorney "General * * * prays an appeal to the Supreme Court "* * * which appeal is hereby allowed." See also conclusion opinion *Gresham, J., same case, 53 Fed., 481.*

No motion to dismiss that appeal appears to have been made. After Judge Gresham thus struck at the heart of the Commission if this Court had not sustained the Commission by a majority vote (*154 U. S., 456-490*), we can see from reading the dissenting opinion how disastrous to the Commission would have been a different decision (*155 U. S., 3-10*). See also opinion, Field, J., to same effect as to courts aiding investigating committees *In re Pacific Com., 32 Fed., 261.*

Without now rearguing the question involved, or noting how strong were the legal reasons for the dissent, we have shown that the order appealed from, the opinion accompanying it, and the opinions in this Court, all alike treated that case as one necessarily turning upon a constitutional question. That question was whether part of Section 12 of the Interstate Commerce Act there involved was "*unconstitutional and void.*" The Evarts Act under which that appeal was taken provides: "That appeals or writs "of error may be taken from the district courts or from existing "circuit courts direct to the Supreme Court in the following cases. "In any case that involves the construction or application of the "constitution of the United States." * * * "*In any case in* "*which the constitutionality of any law of the United States* * * "*is drawn in question.*" See: *2 Gould & Tucker's (p. 65) notes on R. S. U. S. for 1889 to 1897, C. 517 Acts of Congress, Mar. 3, 1891.* No other words of that act would have justified that appeal, or justify this one. The Brimson case was decided by Gresham, J., at circuit December 7, 1892, and by this Court May 26, 1894, so

those decisions were made by virtue of the words of the Evarts statute just quoted. But this case does not involve the construction or application of the constitution, or the constitutionalty of any law or treaty under that constitution. This case is only a case as to the "relevancy" of evidence, so that case is not applicable.

II.

Neither the Commission nor Mr. Hearst, has a legal interest in, or is now in position to maintain, this appeal, because it now presents nothing but abstract questions to this Court for discussion.

If the questions of evidence were relevant, or important, the trial before the Commission would have been stopped pending this appeal before closing the evidence. Instead, in the fall of 1903, Mr. Hearst gave further evidence and rested; his counsel then insisted, and the Commission required defendants to give evidence, which one or more did, and then all rested. The evidence was then closed. Thereupon the Commission set a day for final argument which has since been postponed from time to time at the instance of counsel for Mr. Hearst. The evidence in that case being closed, neither party has the legal right to give further evidence. When counsel for Mr. Hearst rested did he not terminate his right to give evidence? When the defendants rested did they not do the same thing? When the Commission set the day for final argument for various days in 1903, then in January, 1904, and then postponed such argument, did it not do the same thing?

Again; the original act provides, "that any *person* or *persons* "claiming to be *damaged* by any common carrier, subject to the "provisions of this act may *either* make complaint to the Com- "mission * * * or bring suit in his or their own behalf "for the recovery of damages * * * but such person or "persons shall not have the right to pursue both of said remedies "and must in each case *elect which one* * * * he or they "will adopt" (*Sec. 9, Interstate Commerce Act*). It is further provided: "that any person, firm, corporation or association, or any

"mercantile, agricultural or manufacturing society, or body poli-
"tic, or municipal organization, complaining of anything done
"or omitted to be done by any common carrier * * *
"shall briefly state the facts, whereupon * * * such com-
"mon carrier * * * shall be called upon to satisfy the com-
"plaint or answer the same in writing * * * it shall be the
"*duty of the Commission to investigate the matter complained of.*"
"* * * No complaint shall * * * be dismissed because
"of the absence of *direct* damages to the complainant." (Act, Section 13).

The result of such an "investigation" to be confined to the 'matters complained of" is "findings of fact" * * * thereafter in all judicial proceedings * * * "*prima facie* evi-
"dence." (Act, Section 14).

Now there is not one word in the statute authorizing a man who alleges he "*is of necessity* a purchaser of anthracite coal" (*p. 39*) upon being put to proofs of that fact (*pp. 43, 45, 49*) to fail in such proof and still maintain such a proceeding. He must show such an interest as will enable him to maintain a suit in equity for some remedy in behalf of himself, or others for whom he stands as legal champion, or he can maintain no proceeding before the commission. The provision that there must be no dismissal because "*direct* damage" is not shown as to "complainant" is to cover cases of corporations, chambers of commerce, cities and like complainants, who are heard as legal champions of public interests, or of citizens represented by them. For instance, they were not intended to cover the case of any mere stranger, who may see fit to file a complaint where he has no legal interest in the question raised, but where he merely hopes for gain, or fame therefrom. It is axiomatic that courts and commissions are not created, and do not sit at public expense, to try abstract questions, for there are as many real ones as they can handle. The third article of the constitution of the United States provides: "The *judicial* power of the United States shall "be vested in one Supreme Court, and in such inferior *courts* as "as the Congress may * * * ordain and establish." Of the exercise of such judicial power Ch. J. Marshall says: "*That "power is capable of acting only when the subject is submitted to it*

"*by a party who asserts his rights in the form prescribed by law. It* "*then becomes a case, etc.*" (*Op. Osborn vs. U. S. Bank, 9 Wheaton 819*). Is one a party in a legal sense if he has no legal interest in the matter? Can one who has no legal interest in the matter have any legal "controversy" about it? Is there any doubt about the answer made by our entire jurisprudence? If no coal shipper or consumer, then, has a real complaint to make, or a real "controversy" to submit, we are not required to try a fictitious one.

The railroad companies may be very bad, but we no longer try Satan once a year to hear his advocate in his defense. If Mr. Hearst can maintain this proceeding any citizen can start a case before the Commission, *or in a court*, about matters of which he shall complain, although he has no interest therein. And so contracts, sales, prices and corporation stocks, and rates on sugar, tea, flour, wheat, corn, steel, iron, or any of over eight thousand freight items carried by railroads, can be put on trial at the instance of the most curious, cranky, and legally disinterested citizen. Although he did not pass upon this question it is evident Judge Lacombe did not think the statute broad enough to enable Mr. Hearst to maintain his proceeding upon his showing (*p. 833*). This view is not weakened by the words used in the last amendment of the statute as to producing evidence in a case of this character, even if we construe those words to apply to the Interstate Commerce Act as we understand counsel for the Commission to claim. We deny such to be the true construction, but see how it works out. Those words are: "And in proceedings "under this act *and the acts to regulate commerce*, the said court "shall have the power to compel the attendance of witnesses *both* "*upon the part of the carrier and the shipper*, who shall be required "to answer on all subjects *relating* directly or indirectly to the "*matter in controversy*, and to compel the production of all books and papers, both of the carrier and shipper, which *relate* "directly or indirectly to such *transaction*" (*Act Feb. 19, 1903, Sec. 3*). "All acts * * * in conflict * * * are hereby "repealed" (*Act Feb. 19, 1903, Sec. 4*).

The act creating the Commission reads: "The Commission "or any party * * * may invoke the aid of any court of

"the U. S. in requiring the attendance and testimony of witnesses "and the production of books, papers and documents *under the "provisions of this section.*" (Act, Section 12.)

The Brimson Case, 154 and 155 U. S., wae an investigation by the Commission itself under this Section 12, and not a trial like this before the Commission under Sections 9, 13 and 14.

This case then stands like this. If this case rests upon the original act, that act gives authority to compel witnesses to testify, or produce papers in investigations by the Commission under Section 12, but the proceeding before the Commission is not under Section 12. If the amendments of 1903 apply, and we claim they do not, then they give "both" parties, *but not the Commission*, authority to institute this proceeding.

If this case rests, therefore, upon the words of the Act of Feb. 19, 1903, that act does not contain one word giving the Commission the right to institute, or maintain, this proceeding before Judge Lacombe, or to take this appeal. If it rests upon the original act, this proceeding is not under Section 12, which provides for investigations by the Commission itself such as that involved in the Brimson case. This point was not raised before Judge Lacombe, for the case was mainly argued as to whether it was an investigation under Section 12, or a trial under Sections 9, 14 and 13, and whether the evidence and contracts were relevant.

By the amendment of 1903, if that applies, a "shipper" could institute this proceeding. *But Mr. Hearst does not allege or prove he was a "shipper" or has any "transaction," or "controversy," with any "carrier," nor did Mr. Hearst institute this proceeding, or take this appeal, even if he was a "shipper" of coal, hence it must be dismissed.* This construction of these acts is in accord with their plain meaning. It confines such proceedings to real parties having real grievances. It excludes the unseemly sight of the Commission as a party aiding one of the parties in a proceeding of this character as to a case being tried before the Commission as a substitute for a Court of Equity. The Commission should not be able to institute a proceeding like this one to aid one party to the case being tried before it to defeat the other parties thereto. It cannot remain an impartial tribunal, if human, under these circumstan-

ces. And, independent of the statutes, the Commission is not a party legally "aggrieved." It has, or should have, no legal interest in the controversy being tried before it. Take an illustration. An executor cannot maintain an appeal because the Courts defeat his contention in his action to construe a will, when it appears the real question is whether a daughter, or a widow shall get $100,000. If the trial court awards it to the daughter, the widow, not the executor, must take the appeal, because the executor is not legally aggrieved. It is as true here as it was there that, "But when he seeks to have the judgment reviewed in this Court "he must be able to point some statute giving him the right and "conferring the jurisdiction * * * *An appeal to this Court "does not lie unless the party appealing has an interest in the con-"troversy"* (*Bryant vs. Thompson, 128 N. Y., 426, opinion 434-5*).

The language just quoted might have been used as well as to the necessity for a statute in a decision of this Court dismissing an appeal. (*Nat. Ex. Bk. vs. Peters, 146 U. S., 570*).

If a statute does not authorize the appeal the United States cannot maintain an appeal in this Court. (*U. S. vs. Ry. 105 U. S., 624*). Nor can an official succeed upon appeal when he is not legally aggrieved, even if other officials are aggrieved, who do not appeal. (*Cherokee Co. Com. vs. Wilson, 109 U. S, 626*). The principle is this: That a party not legally affected by a decision cannot appeal; so trustees of bondholders (*F., L. & T. Co. vs. Waterman, 106 U. S., 269*); a receiver (*Close vs. G. Cemetery, 107 U. S., 474*); or an unaffected party generally cannot appeal (*Brown vs. Smart, 145 U. S., 459*), and cases there cited. The Commission have and can have no legal "controversy" with the parties here, and by submitting the case to the Commission for decision upon further evidence without instituting this proceeding Mr. Hearst has shown he has no "controversy" to bring here, so no "controversy" is brought before this Court by the appeal and it must be dismissed (*Little vs. Bowers, 134 U. S., 547-652 and cases 558*).

Counsel for the Commission must admit the facts that cannot be disputed upon the argument, or they can be shown after argument on the merits by affidavits as was done in the last case. Whenever and however the facts stated appear they show

there is no real "controvery" here by appeal, no legally aggrieved party here appealing, so this appeal must be dismissed.

III.

The contracts and testimony involved are not relevant to any issue before the Commission.

The *Brimson case* treats the important part of this proposition as settled law. In the prevailing opinion, Mr. Justice Harlan said: "Neither branch of the government, still less any merely "administrative body, established by Congress, possesses, or can "be invested with a general power of making inquiry into the "private affairs of the citizen * * *."

As said by Mr. Justice Field, *In re Pacific R. Com., 32 Fed., 241-250*, "of all the rights of the citizen few are of greater "importance, or more essetal to his peace and happiness than "the right of personal security, *and that involves* * * * "*exemption of his private affairs, books and papers from inspection and scrutiny of others*" (*Op. 154 U. S., 478, 479, and cases cited*).

But if this is true it follows that no contracts, or testimony *can be lawfully forced from a citizen at the instance of a Commission, or by order of a Court for a Commission, unless it is relevant to some issue being tried, or some inquiry of which the Commission has jurisdiction.* This is also the conclusion of Mr. Justice Harlan. He says: "It was open to each of them to contend before that "Court * * * that neither of the questions propounded, nor "the books, papers, etc., called for, *relate to the particular, matter "under investigation, nor to any matter which the Commission is "entitled under the constitution or laws to investigate.*"

The order then under review was a final one dismissing the proceeding there *upon the sole ground that it was unconstitutional.* Such order was final upon that point, unless reversed upon appeal. In that view what is said there in the prevailing opinion about it being "final," and not "advisory" only, is correct (*op. 487*).

In such an order, therefore, *the primary question is that of "relevancy." But here the Commission seeks the opinion of this Court upon "relevancy;" not upon a constitutional question. They*

want the opinion of this Court to learn how to decide the main case now before them waiting their decision. They thus treat the order appealed from as interlocutory and not final. This appears from the brief submitted upon the motion to advance this appeal. In his brief, Solicitor General Hoyt, for the Commission, shows the order is interlocutory for he says: "*Said cause is awaiting final "submission before the * * * Commission and it is claimed " * * * that the decision of the issues must be governed by the "correctness of the ruling at the circuit * * * which is the "basis of the order herein appealed from.*" We have not so claimed, although that is erroneously asserted. But can the issues be so presented to this Court by this interlocutory appeal?

Here the order expressly shows that it rests upon the ground that the contracts and evidence sought are not "relevant." Had the Brimson order so shown we believe that Mr. Justice Harlan and the majority of the court would have been unanimously of the opinion of Mr. Justice Brewer and the minority in that case, and would have held that that order was really interlocutory and so not appealable. (*See op. 155 U. S., p. 3*). The Circuit Court may also, as Mr. Justice Brewer there held, refuse the order "for the "further reason that the questions propounded by the Commis- "sion to the witnesses are deemed *irrelevant or incompetent.*" (*Op. 155 U. S., 3*).

Suppose we are in error in previous argument. Let us assume, broadly, that the Commission have a "controversy" with the railroad companies, within the meaning of the decisions touching appeals, and within the meaning of the statute, and that they have the right to present this case to this court by appeal to obtain its opinion as to the relevancy of the testimony before them, *for contracts and evidence such as the contracts and evidence sought are before them*, what opinion should this court render as to the relevancy of such contracts and such evidence? Should it sustain the decision of Judge Lacombe, or should it overrule that decision? In answer to this question, it has been heretofore urged in behalf of the Commission that the Commission were investigating coal rates under Section 12 of the statute, rather than trying issues before them under Sections 9, 13 and 14. But whether this is correct or not may not be so important on

the question of relevancy as has been assumed on behalf of the Commission.

In the first place, Congress could not give the Commission power to inquire into the intra-state business of common carriers, and it has made it clear that it did not intend to do so by expressly limiting the inquisitorial powers of the Commission under Section 12, to "common carriers, subject to the provisions " of this act."

The only provision in the original Act for compelling the attendance of witnesses and the production of documentary evidence being within Section 12, it must be clear that the provision does not cover the "business" of "common carriers" not "subject to the provisions of this act."

Furthermore, to get at the intent of the Act on this subject, the Act must be read as a whole. When so read, we find in it unimpeachable evidence that it was not intended to give the Commission the power to inquire into the business of coal mining companies, or the business of coal mining, or the business of selling coal, even if coal mining corporations turn out to be railroad corporations, or corporations owned by railroads, where that is permitted, as in Pennsylvania. (*Com. vs. Erie, 132 Pa. St., 591; 139 Pa. St., 457*).

The business of such corporations engaged in mining and selling coal in Pennsylvania, whether that business is regarded as appertaining to real estate (*Brine vs. Ins. Co., 96 U. S., 627*), or domestic commerce touching personal property (*U. S. vs. Knight, 156 U. S., 1 and 11*), is all domestic business subject to the laws of the State of Pennsylvania, and not subject to the provisions of the Interstate Commerce Act. It follows, therefore, that the coal purchase contracts which appellee Sturges and appellee Richardson were asked to produce by the Commission are contracts touching mines and domestic business wholly within the State of Pennsylvania, and wholly outside of the jurisdiction of the Commission.

But the Act, which is the charter of the Commission, still more distinctly shows an intent to limit the Commission in its enquiries touching the business of common carriers, even where

the common carriers are subject to the Commission. In Section 20 of the Act, "common carriers subject to the provisions of this act" are required to make annual reports touching their capital stock, surplus funds, number of stockholders, funded and floating debt, cost and value of property, franchises and equipments, number and salary of employees of each class, amounts expended for improvements, the character of improvements, earnings from each branch of business, operating and other expenses, and balances of profit and loss.

Clearly, Section 12 and Section 20 are to be read together with Sections 1 to 5, for the purpose of getting at the intent of Congress as to the matters into which the Commission were given jurisdiction to make inquiry. The important matters committed to the jurisdiction of the Commission were interstate and not intrastate, rates, under Sections 1 to 5, when complaint should be made of them under Sections 9 and 13. In case of a complaint as to rates under those Sections, the Commission were to try and determine the case in accordance with Sections 13 and 14. As their determination was made "*prima facie* evidence as to each "and every fact found" under Section 14, it follows that that determination must rest upon relevant evidence, or the common carrier is deprived of due process of law, within the true meaning of those words.

This does not mean, of course, that the Commission may not hear much irrelevant evidence, as does a court of equity, without having its decision vitiated thereby, but it does mean that the Commission cannot force irrelevant evidence from common carriers by an order from the courts. It is of the very essence of the law that the courts shall refuse their order in every case where irrelevant evidence is sought. Otherwise, the Commission can use the courts to force irrelevant evidence from common carriers, and can then rest its decision upon such irrelevant evidence, and yet the carriers will be practically powerless to escape the consequence of such decisions, because the common carriers are not permitted to take a direct appeal from the decision of the Commission, and it is not ground for escaping the decision of the Commission when the Commission seeks to enforce it in the courts, that the Commission received and considered irrelevant evidence

in reaching its conclusions. In such a case, if the Commission has received some relevant evidence, and much irrelevant evidence, and has reached its conclusions because of the irrelevant evidence, where it would not have reached such conclusions upon the relevant evidence, the common carrier may still be unable to escape the force and effect of the Commission's finding of fact. It is important, therefore, when the Commission applies for an order to force the common carriers to give evidence, that the courts pass upon the relevancy of such testimony, precisely as they would if a case were upon trial before them where a shipper had sued a common carrier to recover back freight moneys paid under protest.

In such a case, the test of whether or not the carrier is making an excessive or an unjustly discriminating charge, is that found in the Act granting its powers to this Commission. *That test is that the common carrier shall not charge, demand, collect or receive more from one person than another "for doing for him or them a like and "contemporaneous service in the transportation of a like kind of "traffic, under substantially similar circumstances and conditions."* (*Act, Section 2*).

This statutory test is but a recognition of the common law test applied to charges of common carriers, lawyers, and wage earners. The test prescribed is the test by which all charges for work or materials must stand or fall. If we request that services be performed, or that materials be delivered, without inquiring what the price will be, the law implies a promise to pay their reasonable market value at the time and place of delivery. That reasonable market value is ascertained by taking evidence as to the market price of like services, or like materials, at that time and place. In this record there is a little evidence as to the rates upon bituminous coal, and there is a comparison suggested between the rates upon bituminous coal and the rates upon anthracite coal. There is some testimony suggesting that bituminous coal and anthracite coal are sufficiently alike so that the same rate should be applied to each, while the bulk of what little testimony there is from men like Mr. Baer, Mr. Thomas, and others, is to the contrary, and points out dissimilarities between bituminous coal and anthracite coal traffic,

to show that no comparison can be made between them. Such dissimilarity is pointed out in the large number of sizes of anthracite coal, which have to be kept separate from each other, thus requiring many expensive terminals, and much expensive switching, from which bituminous coal, consisting of practically but two kinds, is entirely free.

Upon the one side, it is suggested that the mileage of bituminous coal is greater than the mileage of anthracite coal, and upon the other side it is suggested that the mileage is not a very important factor.

The English and American courts alike have long recognized the fact recognized by every railroad man, that the movement of short-haul freight is much more expensive than is the movement of freight traveling a greater distance, and, therefore, *the mileage test, upon which Mr. Hearst's case really rests, has been rejected by the courts, for reasons recognized by this Court in the Tompkins case* (*176 U. S., opinion 178, 179*).

While the mileage test is not the important test, the comparison of anthracite coal and bituminous coal, or other traffic something like anthracite coal, is proper at common law, or under this statute for the purpose of ascertaining whether or not the rates upon anthracite coal are unreasonable.

In like manner, it was proper to ask many of the independent coal merchants, and officials of the coal companies, whether or not they obtained rebates, and whether or not all shippers were subjected to the same rates upon shipments of anthracite coal. As to all questions comparing anthracite and bituminous coal, or other like traffic, counsel made no objection. As to all questions touching whether or not rebates were given to either coal companies or independent operators, no objections were made. The testimony was universal that no rebates had been given except such as were given to all shippers, and that no rebates whatever had been given since the 65 per cent. coal purchase contracts had been negotiated.

Upon one other subject legitimate questions were asked and answered. It was proper to inquire whether or not freights had been pooled. For this purpose counsel put Mr. Harris and

other witnesses upon the stand, and put questions to Mr. Baer, Mr. Thomas and Mr. Truesdale. No objections were made to the putting of such questions, or to answers to such questions. The testimony clearly showed that there had been no pooling of freights, because they found, from many years' experience, as Mr. Harris sententiously put it, whether they fought for freights, or whether they did not, each road got about the same. Pooling, therefore, was not necessary. There was no testimony of any pool of freights or earnings, but if there had been, or if it can be argued otherwise, that is a subject for consideration and determination by the Commission itself.

But when we pass beyond reasonable rates, or discriminating rates, or pooled freights, what other question is there in the proceeding before the Commission over which the Commission has jurisdiction as to which of the contracts and evidence sought are relevant?

As we have pointed out, the coal purchase contracts sought from Mr. Sturges and Mr. Richardson had to do with coal purchased, delivered and paid for within the State of Pennsylvania. By the very terms of the contracts, the title to that coal passed absolutely to the railroads like the D. L. & W., or the D. & H., or to coal companies like many of those owned or controlled by the railroad companies, the moment that coal was put upon the cars at the breaker's mouth in Pennsylvania. From that moment, that coal was insurable by the purchasers, and if it was lost it was lost by the purchasers. From that moment, the purchasers could give good title thereto. The sellers were the creditors of the purchasers from that moment, to the extent of coal delivered. The only thing remaining to be done was for Mr. Ruley to determine the average monthly price of that grade of coal from that region, from the reports made to him for the month, and then the purchaser was to pay the seller that price for the coal delivered.

This was true of all the contracts except the contracts of the Ontario Railway Company, which contracts were not objected to, were put in without objection, and were straight transportation contracts. As to such contracts, or their legal effect, it is

unnecessary to make any argument here, because they are not involved in any way in this appeal.

In testing this evidence as to its relevancy, we are to bear in mind always that the Commission has no jurisdiction over any one except common carriers. It is confined to the "business" of common carriers *as such*. It has no jurisdiction over any one except common carriers as to interstate common carrier business. The very first Section of the Act begins: "that the provisions "of this act shall apply to any *common carrier* or carriers engaged "in the *transportation of property* or persons * * * for a "continuous carriage or shipment from one state or territory "* * * to any other state or territory, * * * and also to "the transportation, in like manner of property shipped * * * "to a foreign country."

As if this limitation were not stout enough, that Section proceeds:

"Provided, however, that the provisions of this act *shall not* "*apply* to the transportation of passengers or property, *or to* "*the receiving, delivering, storage, or handling of property wholly* "*within one state.*"

This limitation clearly covers the case of buying and "delivering" coal at the breaker's mouth in the State of Pennsylvania. It as clearly covers the case of selling coal delivered by lighters at the wharves in the City of New York. It cuts transportation out, and makes that a subject of inquiry by the Commission. It excludes from the consideration of the Commission either the purchase of the coal or the sale of the coal. It is the interstate transportation of the coal, and that alone, with which the Commission has to deal. The Commission can investigate the interstate transportation on its own account, under Section 12, or it can try a case involving that transportation, at the instance of a complainant, under Sections 9 and 13.

Nor does this view of the law deprive the Commission of any necessary power. The Commission has accomplished, and we trust will hereafter accomplish, much good by exercising its power. If they had the power to inquire into the purchase and sale of coal

and commodities for the purpose of fixing or affecting the price of such commodities, as counsel for Mr. Hearst requested in his opening, they would have a power greater than ought to be committed to any such body by any government. Congress has given no such power to this Commission, or any other body. Whether or not Congress possesses any such power, under the clause of the Constitution giving it the right to regulate interstate commerce, it has never attempted to exercise any such power. No statesman has ever sought to persuade, or succeeded in persuading the people of this country that any such power should be committed to any body whatever. Whatever the defects of our civilization or our government, it is certain that our railroads and our civilization have achieved their success very largely because their initiative in such matters has been left untrammeled by state legislatures and by Congress.

It is clear that the Commission, in discharging its functions, should be confined to interstate transportation matters, precisely as the first section of the act creating it undertakes to confine it to transportation matters that are interstate in character. If so confined, is it not clear that all the questions and contracts touching the purchase or sale of coal, or the details of such sale, or the purchase or sale of coal mines, or of mining corporations, is entirely outside of the jurisdiction of the Commission?

In trying the question of whether or not the charge of a common wagoner—a common carrier—is reasonable, no one would think of inquiring as to how much property he had, or what the mortgages were upon it, or how much money he had made, or what other businesses he was interested in that furnished him transportation, or what he charged to capital account and what to operating expenses. In such a case, the plain question would be whether his charge was too high when compared with other charges of himself or others for the like service, at the like time and place. A railroad is such a common carrier, its cars are called "wagons," yet in some parts of Europe, the law that governs its business is the law of common carriers as developed when the wagons did not run upon steel rails, and that law determines the question of relevancy as it was determined by Judge Lacombe in the court below.

We submit that the appeal of the Commission should be dismissed, or the order appealed from should be affirmed upon the merits.

GEORGE F. BROWNELL,
ADELBERT MOOT,

Attorneys for Appellees,
G. A Richardson and E. B. Sturges.

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No. 408. October Term, 1903.

The Supreme Court U. S.
FILED
MAR 7 1904
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

The Interstate Commerce Commission, Appellant,

vs.

David G. Baird, Fred. F. Chambers, *et al.*, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF DAVID G. BAIRD AND EBEN B. THOMAS, APPELLEES.

FRANCIS L. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
For Appellees.

Allen, Lane & Scott, Pr., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

The Interstate Commerce Commission, Appellant,

vs.

David G. Baird, Fred F. Chamber, George O. Waterman et al.

October Term, 1903.

No. 409.

BRIEF ON BEHALF OF DAVID G. BAIRD AND EBEN B. THOMAS, APPELLEES.

STATEMENT OF THE CASE.

In this proceeding, instituted by the Interstate Commerce Commission in the Circuit Court of the United States for the Southern District of New York, an order was sought which should compel the production of certain documents and answers to certain questions, deemed by the Commission to be material to the issues in a certain proceeding pending before it in which William R. Hearst was complainant and certain railroad companies, defendants.

The appellees herein and the respondents in the proceeding below were witnesses who had declined, under instruction of counsel, to produce the documents called for or to answer the questions propounded to them.

The case was heard upon petition and answer, and the orders prayed for were denied.

In the Commission's petition presented to the Circuit Court the following averment is made as to the character

and scope of the proceedings pending before it (Record, pages 37 and 38):—

> "That when the said witnesses refused to answer said questions, your petitioner was engaged, as aforesaid, at room 70, in the Post Office Building, New York City, in the State of New York, in the discharge of its duty to execute and enforce the provisions of said Act to regulate commerce, and in the exercise of its authority to inquire into the management of the business of common carriers, subject to the provisions of said Act, and to keep itself informed as to the manner and method in which said business is conducted, and to obtain from said common carriers full and complete information necessary to enable it to peform the duties and carry out the objects for which it was created; and your petitioner is of the opinion that the said questions are not only relevant and material to the issues on trial in said proceeding, but answers thereto are necessary in order to enable your petitioner to discharge its duty and execute and enforce the provisions of said Act to regulate commerce and to inform your petitioner as to the manner in which the business of said common carriers is conducted, and to enable your petitioner to obtain the full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created."

The answer of the respondents denied that such was the character of the proceeding, such denial being made by the respondent, Baird, in the form following (Record, page 209):—

> "This respondent denies the averments of said petition that at the time he declined to produce said contracts the said Interstate Commerce Commission was engaged in an inquiry into the management of the business of the common carriers, defendants in

said proceeding, in order that it might keep itself informed as to the manner and method in which said business was conducted, and might obtain from such common carriers full and complete information necessary to enable it to perform such duty.

"He avers, on the contrary, that said Commission was engaged in the hearing of testimony on behalf of the complainant in a certain proceeding pending before said Commission, instituted by William Randolph Hearst, and that the only matters under investigation were the particular allegations made by the said William Randolph Hearst in his petition as to certain alleged unlawful practices of the defendants herein."

The same averment substantially was made by the respondent, Thomas, in his answer. (See Record, page 93.)

Judge Lacombe's ruling as to this contention was as follows (Record, page 833):—

"Among the objections advanced to the granting of this petition it is contended that the Interstate Commerce Commission has no jurisdiction to hear the complaint, for the reason that the complainant is not himself a shipper of coal. It was contended, in opposition, that the Commission is conducting a general investigation into the conduct of the business of transportation by the defendant carriers, which it has a right to do under the statutes independent of any complaint by a person aggrieved. The record, however, does not sustain this proposition. The proceeding before the Commission was begun by the service of a formal verified complaint, to which separate answers were interposed by the several defendants; the petition presented to this court avers that the refusals to produce documents and answer questions took place in the course of a 'hearing upon said complaint' which the Commission had duly ordered; the prosecution of the complaint before the Commission is being conducted—as it is most ap-

propriate that such prosecution should be—by the counsel for the complainant."

The issues raised in the proceeding before the Commission were, as summarized by Judge Lacombe, as follows (Record, page 832):—

> "It appears from the record that William R. Hearst heretofore duly filed a petition and complaint against the defendants, alleging—
>
> "1. That the freight rates charged by them for the transportation of anthracite coal are unreasonable and unjust.
>
> "2. That said rates are relatively unreasonable and unjust as compared with the rates charged for transportation of bituminous coal and with the rates for other carload freight generally.
>
> "3. That defendants have combined to pool and divide among themselves freights and freight traffic of anthracite coal; and
>
> "4. That they have discriminated against private operators of coal mines by charging them a higher rate of freight than charged other private operators or coal companies owned by said defendants; all in violation of the Interstate Commerce Act."

To sustain these contentions, complainant called a large number of witnesses, among others, E. B. Thomas and David G. Baird, the president and secretary, respectively, of the Lehigh Valley Coal Company.

The corporate organization of the Lehigh Valley Coal Company and its relation to the Lehigh Valley Railroad Company is as set forth in the answer of the witness Baird (Record, pages 210, 211):—

> "The Lehigh Valley Coal Company, whose contracts this respondent was directed to produce, is a corporation created by and existing under the laws of the Commonwealth of Pennsylvania. It was organized March 4th, 1875, by merger and consolidation of the Luzerne Coal and Iron Company and the

Green Land Company, corporations created by and existing under the laws of the Commonwealth of Pennsylvania, and has a capital stock of $1,000,000 and an outstanding bonded indebtedness of $19,970,000.

"Under and by virtue of the express authority conferred by the statutes of the Commonwealth of Pennsylvania the Lehigh Valley Railroad Company acquired and holds all its stock, but such acquisition and holding imposes upon said Lehigh Valley Railroad Company no greater responsibility for the acts of said Lehigh Valley Coal Company than is imposed upon or exists in the case of stockholders in corporations generally.

"The said Lehigh Valley Coal Company, by its charter, is authorized to, and has since its organization engaged in the business of mining, purchasing, and selling coal. Its business is wholly dissociated from that of transportation."

Having no connection with the transportation of coal, this company had not been made a party defendant in the proceeding before the Commission.

The testimony sought to be elicited from the two witnesses Thomas and Baird related exclusively to the terms upon which the Lehigh Valley Coal Company purchased certain coal and the methods pursued by it in connection with the sale and disposition of its product. David G. Baird, its secretary, had been subpœnaed to produce certain contracts. By agreement of counsel he was excused from actual attendance before the Commission, under a stipulation, however, that the right of the Commission to enforce production of the contracts called for should be the same as if he had attended, and under advice of counsel had declined to produce them. The proceedings before the Commission leading up to the refusal to produce the contracts called for were as follows (Record, pages 297, 298):—

"Mr. Shearn:—I ask the Commission to direct the counsel to produce the contracts called for.

"THE CHAIRMAN:—As to certain contracts described in this subpœna, counsel replied that there are no such contracts.

"MR. SHEARN:—I ask the court to direct counsel to produce the contracts between the Lehigh Valley Coal Company and the owners of anthracite coal mines. entered into between January 1st, 1901, covering the purchase or transportation of anthracite coal.

"MR. FIFER:—On whom was the subpœna served—on counsel?

"MR. SHEARN:—No, sir; on the president and secretary. You can see (concede) the subpœnas were properly served.

"MR. GOWEN:—Yes, sir.

"MR. SHEARN:—They were served on the president and secretary of the railroad company and on the president and secretary of the coal company.

"MR. GOWEN:—My agreement yesterday with Mr. Shearn was that Mr. Baird, on whom the subpœna was served, should not attend, but that Mr. Shearn should not lose anything.

"THE CHAIRMAN:—I understand counsel to say that there was no such contract as described.

"MR. SHEARN:—He does not say that there are none for the purpose (purchase) of coal, but declines to produce them. I ask that they be produced.

"THE CHAIRMAN:—You make a distinction, therefore, between contracts for the purchase of coal and the sale of coal?

"MR. SHEARN:—I accept for the present counsel's statement that there are no contracts for the transportation of anthracite coal entered into by the Lehigh Valley Railroad Company since January 1st, 1901, but there are contracts for the purchase of anthracite coal entered into by the Lehigh Valley since January 1st, 1901. These are between the Lehigh Valley Coal Company and the owners of mines for the purchase of coal since January 1st, 1901, and

properly described in the subpœna, and I ask the court to make an order directing that they be produced.

"THE CHAIRMAN:—You claim that those contracts provide for the payment of a certain percentage of the price at tidewater?

"MR. SHEARN:—Yes, sir. I would like—if you wish to consider that—to hand up to you the copy of one of these contracts.

"MR. KERR:—Let us confer a moment in regard to it. I think we will be willing to submit one of the contracts to the Commission, not as evidence, but for them to see the terms of the contract, in order that we may discuss the question involved in this matter here.

"COMMISSIONER PROUTY:—Are the contracts substantially the same?

"MR. KERR:—They are substantially the same, not in all details, but in their general provisions. We will have no objections, I think, to the Commission having one of them to examine. * * *

"THE CHAIRMAN:—We will take the matter under consideration and take a recess now until two o'clock.

"THE CHAIRMAN:—During the recess the Commission has briefly examined the blank contract which was submitted to our inspection by the courtesy of counsel. We understand from counsel that all the stock of the Lehigh Valley Coal Company which is denominated the buyer in this contract, is owned by the Lehigh Valley Railroad Company, and it appears from an inspection of the contract that the prices paid to the seller are certain percentages for which the coal is sold at tidewater terminals. If the balance retained is less than the amount paid the railroad company, the coal company sustains a loss in the transaction, which is hardly to be assumed. However this may be, the facts alleged to be contained in these contracts may properly be shown, we think, and we also think that the contracts are com-

petent evidence of the facts. We therefore overrule the objection and allow the contracts to be put in evidence."

The legal effect of these contracts is thus stated by Judge Lacombe: "It is entirely a contract of purchase, and does not deal at all with the subject of transportation. It fixes the price which the Lehigh Valley Coal Company is to pay the seller for coal at a certain percentage of the price at which coal of the same quality and sizes shall be sold during the month at a specified place. It is in no way different from a contract for the purchase of a specified number of tons of coal at a specified sum in dollars and cents, a contract made in the State of Pennsylvania and to be completed therein by the delivery of coal at the breaker."

Eben B. Thomas, the president of the Lehigh Valley Coal Company, was interrogated as to a great variety of matters. His testimony will be found on pages 591-632 of the Record. The questions which he declined to answer were three in number, and were as follows:—

"Bearing in mind your testimony that you do not believe in reckless competition, do you also conduct the business of selling in accordance with those same ideas, so as to avoid what you regard as reckless competition?

"Who fixed the price of the coal of the Hillside Valley Coal Company that is sold at tidewater?

"Who fixed the price of the coal of the Hillside Coal and Iron Company and the Pennsylvania Coal Company that was sold at tidewater during your connection with those properties?"

BRIEF OF ARGUMENT.

Section 12 of the Act to Regulate Commerce, which furnishes the basis for this proceeding, provides a method for enforcing attendance of witnesses and production of

books and papers in proceedings before the Interstate Commerce Commission. The method to be pursued is thus defined by the section:—

> "Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.
>
> "And any of the Circuits Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier, or other person, to appear before said Commission (and produce books and papers if so ordered), and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof."

The authority of the court is to be exerted in order that evidence "*touching the matter in question*" may be forthcoming. The court, by the express enactment of the section is to issue an order, not, it will be observed, to produce books called for by the Commission or answer the questions propounded by it or by it ordered to be answered, but to produce books and give evidence "touching the matter in question."

The power of the court would seem, therefore, to be limited by the express language of the Act, to requiring the production of papers or answers to questions relevant to the matter pending before the Commission. This, however, would probably be true, without any special provision of the Act to this effect, for it can hardly be sup-

posed that Congress intended that the power of the courts should be exerted to aid the Commission in reaching a determination which would be founded in part, at least, and possibly entirely upon irrelevant and consequently incompetent testimony, especially when it is considered that the courts, in a proceeding to enforce the Commission's order would have to give effect to the findings of the Commission, based as they would be upon improper evidence, and if these findings were contested might have to exclude the very evidence the production of which before the Commission they had enforced.

This court was required to consider this section of the Interstate Commerce Act, in the case of the Interstate Commerce Commission *vs.* Brimson, 154 U. S. Reports, page 447. There a proceeding had been instituted by the Commission to compel answers to certain questions which it had propounded to the witness, against whom the proceeding was brought, in an investigation which was being conducted by the Commission itself. The application of the Commission was resisted upon the ground that Congress had not the right to authorize the courts of the United States to take cognizance of such a proceeding, and upon the further ground that the question which the witness had declined to answer, related to matters which were not relevant or material to the subject matter of the investigation.

The Circuit Court, before which the Commission proceeded, dismissed the Commission's petition upon the first ground mentioned above; but upon appeal to this court, this judgment was reversed. In the opinion of the court, delivered by Mr. Justice Harlan, it is said (page 479):—

> "Suffice it in the present case to say that as the Interstate Commerce Commission, by a petition in the Circuit Court of the United States, seeks, upon grounds distinctly set forth, an order to compel appellees to answer particular questions and to produce certain books, papers, &c., in their possession, it was open to each of them to contend before that

court that he was protected by the Constitution from making answer to the questions propounded to him; or that he was not legally bound to produce the books, papers, &c., ordered to be produced; *or that neither the questions propounded nor the books, papers, &c., called for relate to the particular matter under investigation,* nor to any matter which the Commission is entitled, under the Constitution or laws to investigate. These issues being determined in their favor by the court below, the petition of the Commission could have been dismissed upon its merits;"

and the learned judge thus concludes his opinion (page 490):—

"In view of the conclusion reached upon the only question determined by the Circuit Court, what judgment shall be here entered? The case was heard below upon the petition of the Commission and the answers of the defendants. *But no ruling was made in respect to the materiality of the evidence sought to be obtained from the defendants.* Passing by every other question in the case, the Circuit Court, by its judgment, struck down so much of the twelfth section as authorized or required the courts to use their process in aid of inquiries before the Commission. Under the circumstances, we do not feel obliged to go further at this time than to adjudge, as we now do, that that section in the particular named is constistitutional, and to *remand the cause that the court below may proceed with it upon the merits of the questions presented by the petitions and the answers of the defendants, and make such determination thereof as may be consistent with law.*"

In the argument in the court below, an attempt was made to rest the right of the Commission to enforce the production of papers and answers to questions not relevant or material to the issues which it was trying, upon section 3 of the Act of Congress of February 19th, 1903,

entitled "An Act to further regulate Commerce." This section enacts as follows:—

> "And in proceedings under this Act and the Acts to regulate commerce, the courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction."

In the first place it will be observed that this section furnishes no support for the contention advanced, as it relates exclusively to the attendance of witnesses in proceedings pending in the Circuit Courts. But apart from this, it is apparent, it is submitted, that by the use of the words "directly or indirectly" Congress did not intend to abrogate the ordinary rules governing the admissibility of testimony in favor of parties to proceedings of the character contemplated in the section referred to. In fact, Congress promulgated no new rule of evidence by this section, for testimony may be relevant which relates only indirectly to the matter in issue.

That the relevancy of the evidence sought to be obtained was deemed by the Commission as inherent in the question of its right to maintain this proceeding appears from the petition filed by the Commission in the court below, wherein it is alleged "that the said questions are not only relevant and material to the issues on trial in said proceedings, but answers thereto are necessary, &c."

Were then the questions, which the witnesses in the present case declined to answer, and the papers which they declined to produce, material and relevant to the matters under investigation by the Commission?

The proceeding before the Interstate Commerce Commission had been instituted by one W. R. Hearst against certain Railroad Companies, to wit: Philadelphia and

Reading Railway Company; Lehigh Valley Railroad Company; Delaware, Lackawanna and Western Railroad Company; Central Railroad Company of New Jersey; New York, Susquehanna and Western Railroad Company; Erie Railroad Company; New York, Ontario and Western Railway Company; Delaware and Hudson Company; Pennsylvania Railroad Company; and Baltimore and Ohio Railroad Company.

The defendants had been called upon to answer and meet allegations affecting their methods of conducting business, which involved alleged illegal practices of the following nature:—

First.—Maintenance of unreasonable freight rates on anthracite coal to New York and other points.

Second.—Agreement and combination for the pooling of freights and freight traffic in anthracite coal.

Third.—Discrimination in rates in favor of certain Coal Companies, whose stock was owned by the Railroad Companies defendants.

As preliminary to any consideration of the relevancy of the evidence sought to be introduced, relating to the contracts and transactions of the Lehigh Valley Coal Company, to the issues raised or involved in the proceeding before the Commission, an understanding of the relations existing between that company and the Lehigh Valley Railroad Company is desirable. The Coal Company is an entirely distinct and separate legal entity, all of the stock of which is owned by the Railroad Company. This condition has existed since 1875, so that there was not much force in the suggestion made by Commissioner Prouty that this separate organization might perhaps be regarded as a device (and hence disregarded) to evade the effect of the Interstate Commerce Act, which became a law some twelve years later. This ownership of its stock by the Railroad Company is pursuant to express

authority conferred by the statutes of Pennsylvania. The policy of that State to encourage development of its mineral resources through mining companies controlled by transportation companies has been clearly recognized by its courts and full effect has been given to the legislation providing for such ownership. A striking instance of this is furnished by the decision of the Supreme Court of Pennsylvania in the case of Commonwealth *vs.* New York, Lake Erie & Western Railroad Company, 132 Penna. State Reports, page 591. In that case the Commonwealth of Pennsylvania had proceeded by *quo warranto* to escheat certain lands belonging to the Northwestern Mining and Exchange Company, upon the ground that as all the stock of that company was owned by the New York, Lake Erie and Western Railroad Company, the latter company was the real owner of the lands, and as such ownership was not authorized by the laws of Pennsylvania the lands were subject to escheat under an Act of the State of Pennsylvania, approved April 26th, 1855, providing that "No corporation * * * shall hereafter acquire and hold any real estate within this Commonwealth directly in the corporate name, or by or through any trustee or any device whatsoever, unless specially authorized to hold such property by the laws of this Commonwealth," and further providing for an escheat of lands held in violation thereof.

The Supreme Court held, however, that as the statutes of the State authorized the holding of the stock of the mining company by the New York, Lake Erie and Western Railroad Company, such holding could not be regarded as a device to evade the provisions of the Act of 1855. Upon this point the court said:—

> "The object of this legislation is obvious. It was to authorize railroad and canal companies to employ their capital and credit to aid in the development of the mineral resources of the Commonwealth. Such development, as every one knows, is in many instances beyond the reach of individual enterprise. It was easy enough to form corporations with all

the requisite powers for this purpose. It was a very different thing to find capitalists to take their stocks or bonds. Hence it was that the legislature gave to railroad and canal companies the power to purchase both stocks and bonds of such companies. Nor was any limitation placed upon this power. They might buy a portion or all of the stock. It probably never occurred to the legislative mind, while the purchase of a portion of the stock of a mining company, would be aiding such corporation to develop the mineral resources of the State, the purchase of a majority of or the whole of the stock of such company might he held to be a 'device' to evade the Act of 1855. However that may be, the Act of 1869 was evidently intended to legalize, and perhaps encourage, railroad and canal companies to invest in this species of mining companies. It involved, necessarily, the control of such companies by the corporations making such investments, to the extent of the stock held by them. A majority of the stock controls the corporation; the corporation controls the land held by it. In this sense, and to this extent, the Act of 1869 enabled railroad companies to control real estate, the title to which they were forbidden to hold directly or indirectly by the Act of 1855. It must not be forgotten, however, that controlling real estate, by means of the ownership of a majority of the stock of such corporation, is a very different matter from holding the title to such real estate. The one is legalized by the Act of 1869; the other is forbidden by the Act of 1855."

The Interstate Commerce Commission has itself recognized the conditions created by the policy of the State of Pennsylvania and the futility and impropriety of any attempt on its part to ignore these. Thus in the case of Coxe Brothers against the Lehigh Valley Railroad Company, 4 I. C. C. Reports, 535, in which the Commission had under consideration the reasonableness of

the freight rates on anthracite coal in force on this same Lehigh Valley Railroad, in referring to the relations existing between that company and the Lehigh Valley Coal Company, Mr. Commissioner Morrison delivering the opinion of the Commission, used this language:—

> "The legal right of the Lehigh Valley Railroad Company to take and hold the capital stock of the Lehigh Valley Coal Company, and the right of said coal company to mine, buy, ship, and sell coal is not raised in this proceeding, and if such right were raised and challenged, this Commission has no authority to determine it. While the coal company may, in the exercise of its chartered rights, buy and sell coal, certainly this Commission cannot determine the prices at which it may buy and sell, so that the railroad company may realize its established freight rates as carrier and suffer no loss as stockholder. The Commission would be incapable of any such determination if it had any authority to make it." * * *
>
> "Whatever opportunity for oppression and abuse may be afforded, or whatever possible injury might result to the public interest, from the corporate ownership and control or corporate relations existing between the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company, the authority of this Commission extends to such abuses only as are in conflict with the Act to regulate commerce or some of its provisions."

The decision of the Supreme Court of Pennsylvania, above referred to, should, it is submitted, be accepted as an authoritative declaration that ownership by railroad companies of the stock of coal companies, under the Act of 1869, cannot be treated or regarded as a device to enable the railroad companies to engage indirectly in the business for which the coal companies were organized and that consequently the acts of a Coal Com-

pany, the stock of which is held by a Railroad Company, cannot be regarded or treated as the acts of the Railroad Company.

We should hardly, however, be justified in further considering this feature of the case, for it is undoubtedly true, as stated by Judge Lacombe in dealing with the question of the relevancy of the contract which the appellee, Baird, had declined to produce, that: "Whether the Lehigh Valley Coal Company is to be considered as an independent corporation or whether in the transaction it is to be taken as the *alter ego* of the Railroad Company and the coal bought under the contract be treated as the coal of the Railroad Company, this particular contract is not relevant to the questions of reasonable rates, discrimination, &c., which were presented by the complaint."

This conclusion of the learned judge was, we submit, entirely correct.

The effect of these contracts was thus stated by Judge Lacombe, to whom a copy of one had been submitted:—

> "The contract, or at least one of the contracts asked for, has been produced and submitted to the court, and it does not provide, as indicated in the petition, that the 'prices paid to the seller are certain percentages of the prices for which the coal is sold at tidewater terminals.' It is entirely a contract of purchase, and does not deal at all with the subject of transportation. It fixes the price which the Lehigh Valley Coal Company is to pay the seller for coal at a certain percentage of the price at which coal of the same quality and sizes shall be sold during the month at a specified place. It is in no way different from a contract for the purchase of a specified number of tons of coal at a specified sum in dollars and cents; a contract made in the State of Pennsylvania, and to be completed therein by the delivery of coal at the breakers."

In this connection it should be observed that, while Judge Lacombe held that these contracts were irrele-

vant and declined to make an order for their production, he coupled with such refusal this declaration: "If, however, there are any contracts in the possession of the witness which deal with the subject of transportation, as well as with the subject of purchase, they should be produced."

The complainant was therefore in a position to demand and secure the production of any contracts dealing with the subject of transportation, but no such demand has been made by him.

The theory held by complainant's counsel as to the relevancy of these coal purchase contracts is thus stated in the affidavit accompanying his application for the issuance of a subpœna *duces tecum*:—

> "That the contracts called for are ostensibly contracts for the purchase of anthracite coal from mine owners or operators upon a basis of a percentage, stated therein, of the price realized on the sale of coal at tidewater and other points of distance, but that said contracts are in reality, as will appear when they are construed in the light of the evidence to be adduced, contracts fixing the rate of transportation of anthracite coal from the mines to its destination, said rates appearing therefrom to be entirely different from the published tariffs of any of said railroad companies. They constitute, therefore, important links in the chain of evidence by which the petitioner expects to prove unlawful discrimination of rates on the part of the respondent railroad companies."

In his argument before the Commission, as to their admissibility, he amplified his grounds and contended that they were admissible, because—

> (*a.*) While nominally contracts for the purchase of coal, they in reality were intended to fix the rate for the carriage of the coal covered by them, such rate being the difference between the amount real-

ized by the Coal Companies for the coal and the amount paid therefor.

(*b.*) They afford evidence of a monopoly.

(*c.*) They establish conditions which tend to support complainant's allegations that the Railroad Companies do not make rates in competition with one another, a condition which has some relevancy to the question whether their rates are reasonable.

Were these contracts admissible as evidence of the rates of freight paid by the Coal Companies?

It was not pretended that there was any evidence that these contracts had any other purpose than that disclosed upon their face, but counsel contended before the Commission, and his contention was apparently accepted, that the Commission would be justified in inferring that their purpose and effect were to fix the rate to be paid for the transportation of coal purchased thereunder; and, further, that such rate was to be the amount of profit realized by the Coal Company from the purchase and sale of the coal.

It is evident, of course, that this contention, even if sustainable, could not tend to establish the complainant's case, unless coupled with proof that this profit was less than the tariff rates established by the Railroad Company, for if the rate paid by the Coal Company was to be measured by its profit on the coal purchase contracts, certainly it was a necessary part of the complainant's case that he should establish that this profit was less than the tariff rates. This he not only entirely failed to do, but the evidence, which he himself adduced, affirmatively established that the Coal Company had paid full tariff rates on all its coal, and had, after charging the same against its purchased coal, realized a profit thereon.

Mr. Thomas (Record, page 619):—"The best answer to that is that the Lehigh Valley Coal Company, out of its sixty-five per cent. contracts, and putting it altogether, does not lose any money on its sixty-five per cent. contracts."

(The sixty-five per cent. contracts referred to are the so-called coal purchase contracts.)

MR. THOMAS (Record, page 629):—"The Lehigh Valley Coal Company pays the Lehigh Valley Railroad Company the full tariff."

The complainant insisted, however, that because it appeared that on a small proportion of the coal thus purchased, viz., prepared sizes marketed in New York, the Coal Company did not at all times realize on such sales enough profit to enable it to pay the tariff rates, and come out whole as to such coal, so segregated, that the Commission must find that the Coal Company had not paid the tariff on such coal, and consequently that the Railroad Company had carried the same at preferential and consequently discriminating rates of freight.

As it appeared from the evidence, that of the coal purchased by the Lehigh Valley Coal Company, only about ten per cent. came to New York (Thomas, Record, page 618), and as only a portion of this consisted of prepared sizes, and as it affirmatively appeared that, except at times when coal was selling at an unusually low figure, the Coal Company realized a profit even on this particular portion of its coal, more than sufficient to enable it to pay thereout the tariff rates of the Railroad Company, it will be seen how inadmissible is the theory advanced by complainant.

Complainant's offer was in effect to show that the Coal Company had on a portion of the coal (certainly less than five per cent.) purchased by it, realized as a profit less than the freight rates payable thereon.

Suppose the contracts had been produced and the Commission had found that, on a certain small percentage of the coal acquired thereunder, the profit had not been equal to the freight rates in force, could such finding possibly support a conclusion adverse to the Railroad Company's contention that it had received its tariff rates on all coal transported for the Coal Company? The conclusion would not have been justified, if there had been no other evidence for *non constat* that the purchases

as a whole were not profitable, or that, if they were not, the Coal Company had not been able, out of its other business (for the coal purchased under these contracts represented only a portion of the Coal Company's business), to make good its losses on purchased coal. But, as already stated, the evidence adduced by the complainant was direct and uncontradicted that the coal purchase contracts had proved profitable, and that the Lehigh Valley Coal Company had paid full tariff rates on all its shipments.

But apart from the fact that the contracts in connection with the evidence submitted by complainant, wholly fail to establish any preferential or discriminating rate of freight in favor of the Coal Company, it is most confidently submitted that they were wholly inadmissible as tending to prove anything whatever in connection with the rates paid by the Coal Company on coal purchased thereunder. Unless their legal effect was to limit the Coal Company's freights to its profits on the coal, they could not have the effect contended for by complainant. That no such effect can be imputed to them can be perhaps well illustrated by supposing that in an action brought by the Lehigh Valley Railroad Company against the Lehigh Valley Coal Company, to recover freights for coal carried, the latter company should set up that the coal so carried had been purchased under one of these contracts, and that the effect of the same was to relieve it from the obligation to pay tariff rates, if it could not sell its coal at a price to enable it to pay these, without making a loss on the transaction, and that the price realized on the particular coal carried had been insufficient for this purpose. It will be at once apparent how futile such a contention would be, and yet, unless the effect of the contracts would justify this position on the part of the Lehigh Valley Coal Company, in the case supposed, how can they be admitted in evidence for the purpose of sustaining a theory that the Lehigh Valley Coal Company, in case of coal purchased thereunder, pays the Railroad Company not the tariff rates, but the

difference between the amount it realizes for the coal and the amount which it is required, under the contract, to pay the operator from whom it is purchased. If there is any understanding or agreement between the Railroad and the Coal Company, that the Coal Company shall only pay this difference, that is, of course, another matter, but the contract itself wholly fails to establish this, and should not, therefore, be admitted in evidence for any such purpose.

If then the contracts did not tend to establish the rate of freight paid on coal purchased thereunder, it is clear that they were not admissible in evidence to prove the rate of freight paid by the Coal Companies on such coal, and hence had no relevancy or materiality whatever to the allegations of the complainant that the Railroad Company had exacted and received less on this coal than its published tariff rates.

The next ground upon which complainant's counsel rested his argument in favor of the admissibility of the contracts was that they tended to prove the existence of a monopoly. Even if this were their effect it afforded no reason for admitting them as evidence in the proceeding before the Commission, and this is true whether the monopoly thereby created was in the control of the coal or in its carriage. With neither of these conditions has the Interstate Commerce Commission power or authority to deal. And, indeed, this is the view of complainant's counsel himself, for in his opening address to the Commission he very frankly stated that he proposed to introduce evidence to prove monopoly or combination "so that this Commission shall have it in its power, if it deems it wise, to certify its findings to the Attorney General of the United States for such action as he deems proper to take."

The other ground urged was that the contracts were relevant as bearing upon the question whether the rates charged are competitive, and this to repel the possible presumption in favor of the reasonableness of rates established under normal or competitive conditions. Com-

plainant's theory probably being that if, for example, the coal purchased by the Lehigh Valley Coal Company was in the control of the operators, from whom the purchases were made, the carriage of a portion of this coal might be secured by some other carrier than the Lehigh Valley Railroad Company, and hence, these purchases tend to prevent competitive efforts on the part of the carriers to secure this traffic.

But if this question of the extent of control of the coal by the Coal Companies is a factor to be taken into account, in determining the reasonableness of the freight rates in force, the important and material fact would be to what extent was the coal so controlled, and not what were the terms and conditions upon which a certain portion of it was purchased? The contracts will not throw light upon the former question. All the witnesses interrogated upon the subject answered fully as to the fact and extent of these purchases. Thus, Mr. Thomas (Record, page 595) testified as follows:—

> "MR. SHEARN:—The coal—a large part of the coal of the Lehigh Valley Coal Company, as you have stated, is coal purchased? That coal is purchased under these sixty-five per cent. contracts?
>
> "MR. THOMAS:—I beg your pardon. I said that we purchased about two million three hundred thousand tons. I didn't say it was a large part.
>
> "MR. SHEARN:—I should not characterize it as 'large.' The amount you do purchase is purchased under the sixty-five per cent. contracts, is it not?
>
> "MR. THOMAS:—Yes, sir.
>
> "MR. SHEARN:—That is to say, the Lehigh Valley Coal Company buys coal to the extent that you have named, approximately, of independent miners, agreeing to pay them sixty-five per cent. of the prices realized at tidewater, on prepared sizes?
>
> "MR. THOMAS:—Yes, sir.

But apart from this consideration, is there any justification for the view that the absence of competition af-

fords some ground for an inference or presumption against the reasonableness of rates established by carriers. Rates are presumed to be reasonable, and this presumption cannot be overcome or even impaired, it is submitted, by proof, that the rates established are not forced or influenced by competition of other carriers. This is not the case of a carrier enjoying a monopoly of the carriage of goods or traffic of a certain kind to a particular market. Even in such a case, no inference against the reasonableness of the rate established could arise from such circumstance. But it is a case where there are a number of lines hauling coal in competition with one another, and the proposition advanced is that because certain coal mining companies, which ship respectively by one carrier exclusively, acquire by purchase certain coal in addition to that mined by them, this fact may be considered in determining whether the rates of the carrying companies are lawful. This proposition, it would seem, has but to be stated to demonstrate its unsoundness. Such fanciful and unsubstantial considerations should be given no weight in determining whether the carrier is charging more than is reasonable for the service to be performed. Other and substantial considerations should determine this.

Then, finally, the right to the production of the contracts was rested upon the contention that they established a "pooling" or division of the traffic in violation of section 5 of the Interstate Commerce Act.

It was, of course, not pretended that the contracts themselves provided for any pooling or division of freights. The theory seems to have been that because the coal companies would in all likelihood ship the coal purchased by them over and by the railroads owned or controlled by the railroad companies with which they were allied by stock ownership, the purchases of such coal resulted in a pooling of freights, in violation of the law upon the subject.

Even if we eliminate the coal company and treat the coal as purchased directly by the carrying company, no

such result could follow. Section 5 of the Interstate Commerce Act provides as follows:—

> "That it shall be unlawful for any common carrier, subject to the provisions of this Act, to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

This does not prohibit a purchase by a carrier subject to its terms of merchandise which it desires to secure the carriage of, and this is all that the coal companies, regarding them merely as the hands of the railroad companies, have done in the present case.

The questions relating to the methods pursued by the coal companies in the sale of their coal seem to be so wholly irrelevant to any matter before the Commission that it is difficult to even formulate an argument in favor of the admissibility of evidence of this sort, in order to combat it. In the discussion that took place before the Commission, no argument on this specific matter was advanced. The Commission having, on the admissibility of the coal-purchase contracts, ruled in favor of the right to investigate the business and actions of the coal companies, when the question of the relevancy of proof as to the methods pursued by these companies in selling their coal came under consideration, simply said that they regarded the question as already passed upon, and overruled the objections to the questions put to the witnesses. Assuming, for the sake of the argument, that the questions, if answered, would have disclosed an agreement or combination between the coal companies to regulate the prices and terms upon which they should sell their coal at tidewater at New York, how could this afford the slightest ground for the conclusion that the rates of the

carrying companies, which had transported the coal to that point, were unreasonable, or that this traffic was pooled by the carriers, or that a certain portion of it had been carried under discriminative charges. Even if the Coal Companies were eliminated, or regarded merely as "devices" of the Railroad Companies, and it had been made to appear that the latter were thus selling coal under a combination or agreement as to prices, how could it even be plausibly argued that proof that they had been proven guilty of an offense under the Sherman or so-called Anti-Trust law, was admissible in order to convict them of infractions of the interstate commerce law? Excepting upon some such theory, the relevancy of this evidence is not apparent.

FRANCIS I. GOWEN,
F. H. JANVIER,
JOHN G. JOHNSON,
For Eben B. Thomas and David G. Baird, Appellees.

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MAR 4 1904
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

WILLIAM H. TRUESDALE, FRED F. CHAMBERS, O. C. POST *et al.*,
Appellees.

Motion.

Now comes appellees William H. Truesdale, Fred F. Chambers and O. C. Post, by their counsel, and move the Court to dismiss the appeal in the above mentioned cause for want of jurisdiction, because the order from which the said appeal purports to have been taken was not entered in a suit in equity within the provisions and meaning of either of the Acts of February 11, 1903, or February 19, 1903.

Walter W. Ross

WALTER W. ROSS,
Counsel for Appellees William H. Truesdale, Fred F. Chambers, O. C. Post.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

INTERSTATE COMMERCE COMMISSION, Appellant, v. W. H. TRUESDALE *et al.*, Appellees.	No. 409.

Notice.

TO HON. P. C. KNOX, ATTORNEY-GENERAL OF THE UNITED STATES AND C. J. SHEARN, COUNSEL FOR APPELLANT.

Please take notice that on Monday, the 7th day of March, 1904, at the opening of Court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the said Court thereon. Annexed hereto is a copy of the brief of argument to be submitted with the said motion in support thereof.

Walter W. Ross, WALTER W. ROSS,
Counsel for Appellees W. H. Truesdale,
F. F. Chambers, O. C. Post.

Supreme Court of the United States.

No. 409.—October Term, 1903.

The Interstate Commerce Commission, Appellant, vs. Daniel G. Baird, Fred. F. Chambers, George O. Waterman, et al. } Appeal from the Circuit Court of the United States for the Southern District of New York.

[April 4, 1904.]

This is an appeal from an order made in the Circuit Court of the United States for the Southern District of New York in the matter of the petition of the Interstate Commerce Commission for orders requiring the testimony of witnesses and the production of certain books, papers and documents. The petition recites that the Attorney General of the United States, at the request of the Interstate Commerce Commission, instructed the United States District Attorney for the Southern District of New York to present the petition and institute proper proceedings for the enforcement of the provisions of the acts to regulate interstate commerce as amended, and to invoke the aid of the court in requiring the attendance and testimony of witnesses and the production of books, papers and documents, pursuant to the provisions of said acts. The case grows out of a complaint of William Randolph Hearst, filed on November 2, 1902, with the Interstate Commerce Commission, against the Philadelphia and Reading Railway Company, Lehigh Valley Railroad Company, Delaware, Lackawanna and Western Railroad, Central Railroad Company of New Jersey, New York, Susquehanna and Western Railroad Company, Erie Railroad Company, New York, Ontario and Western Railway Company, Delaware and Hudson Company, Pennsylvania Railroad Company and Baltimore and Ohio Railroad Company.

In the complaint it was charged: That the defendants are common carriers, engaged in the transportation of passengers and freight between points in different States of the United States, and are particularly engaged in the transportation of anthracite and bituminous coal mined in Pennsylvania, Maryland and West Virginia, and shipped as interstate traffic over said lines, and are carriers subject to the provision of the act of February 4, 1887, to regulate commerce, and the acts amendatory thereto; that the rates charged and exacted by the defendants for the transportation of anthracite coal in carloads from points in the anthracite coal region of Pennsylvania to New York city and New York harbor points and internal points of destination in the State of New York,

to Boston and other points in the New England States, to Baltimore and other points in the State of Maryland, and to Washington, in the District of Columbia, are unreasonable and unjust, and subject consumers and producers of such coal, who are not common carriers or corporations owned and controlled by common carriers, to undue and unreasonable prejudice and disadvantage in favor of and to the undue and unreasonable preference and advantage of said defendants and companies under their control, in violation of sections 1 and 3 of the act to regulate commerce; that the rates charged and exacted by the defendants for the transportation of anthracite coal are relatively unreasonable and unjust, and unjustly discriminating against the interests of dealers and consumers of that commodity as compared with the rates contemporaneously charged by said defendants for transportation of bituminous coal for much longer distances and to the points of destination above mentioned, and also as compared with the defendants' rates and charges on other carload freight generally, all of which is a violation of §§ 1, 2 and 3 of the act to regulate commerce; that the defendant companies—Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, New York, Susquehanna and Western Railroad Company and the Philadelphia and Reading Railway Company—are, in the absence of agreement, natural competitors in the business of transporting anthracite coal from the coal fields of Pennsylvania to tidewater at New York, two of said defendants—the Lehigh Valley Railroad Company and the Central Railroad Company of New Jersey—being substantially parallel lines; that in 1896, 1897, 1898, 1899, 1900 and 1901 the six defendants last named, by an agreement and combination with one another, pooled and have during the year 1902 pooled freights and freight traffic in anthracite coal, so as to divide the same between their different lines in agreed proportions, in violation of § 5 of the act to regulate commerce. The prayer of the petition was that the defendants be required to make answer to the charges, and, after hearing, for an order or orders commanding the said defendants, and each of them, wholly to cease and desist from each and every of the alleged violations of the act to regulate commerce, and for such further order or orders and action by the commission as its duty under the act and the cause of petitioner and others similarly situated may require. Answers were filed by the railroad companies, taking issue with the allegations of the petition and denying violation of the law. In the course of the hearing certain witnesses refused to produce contracts and answer questions when required so to do by order of the commission, which refusal gave rise to the petition to the Circuit Court. The character of the testimony required by the order of the commission is sufficiently set forth in the opinion hereinafter given. To the petition answers were filed too lengthy to abstract, and in substance setting forth the

right of the defendants to refuse the production of the papers and documents and to decline to answer the questions because the same did not relate to any subject which the commission had the right to investigate and the contracts relate to the private business of persons not parties to the proceedings before the commission; that the witnesses are protected in their right to refuse to produce the contracts or answer the questions by the Fourth, Fifth and Tenth Amendments to the Constitution of the United States; that the contracts were not relevant to the subject matter of investigation before the commission. The Circuit Court placed its decision on the latter ground, and dismissed the petition of the Interstate Commerce Commission.

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

A motion is made to dismiss the appeal upon the ground that no direct appeal lies to this court from the order of the Circuit Court. The act of February 19, 1903, (Comp. Stat. 1901, Sup. of 1903, p. 365,) to further regulate commerce with foreign nations and among the States, § 3, closing paragraph, enacts, "*Provided*, That the provisions of an act entitled 'An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' an act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three, shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission."

The second section of the act of February 11, 1903, (Comp. Stat. of 1901, Sup. for 1903, p. 376,) provides, "That in every suit in equity pending or hereafter brought in any Circuit Court of the United States under any of said acts [having reference to the anti-trust act of 1890 and the act to regulate commerce mentioned in the preceding section] wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the Circuit Court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

In support of the motion to dismiss it is argued that the language of the proviso of section 3, above quoted, "shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission," must be read in connection with preceding paragraphs of the section, which provide for bringing actions by direction of the Attorney General in the Circuit Courts of the United States, and do not include proceedings of the character of the present action to compel the

production of books and papers and the giving of testimony by witnesses called before the commission.

It is true that the office of a proviso, strictly considered, is to make exception from the enacting clause, to restrain generality and to prevent misinterpretation. (*Minnis* v. *United States*, 15 Pet. 423; *Austin* v. *United States*, 155 U. S. 417–431; *White* v. *United States*, 191 U. S. 545, 551.) It is apparent that this proviso was not inserted in any restrictive sense or to make clear that which might be doubtful from the general language used. It was inserted for the purpose of enlarging the operation of the statute so as to include a class of cases not otherwise within the operation of the section. It may be admitted that this use of a proviso is not in accord with the technical meaning of the term or the office of such part of a statute when properly used. But it is nevertheless a frequent use of the proviso in Federal legislation to introduce, as in the present case, new matter extending rather than limiting or explaining that which has gone before.

In *Chesapeake & Potomac Tel. Co.* v. *Manning*, (186 U. S. 238, 242,) the subject was under consideration, and Mr. Justice Brewer, delivering the opinion, while recognizing the restrictive office of a proviso as stated by Mr. Justice Story in *Minnis* v. *United States*, (15 Pet. 423, 445,) added: "While this is the general effect of a proviso, yet in practice it is not always so limited. As said in *Georgia Banking Company* v. *Smith*, (128 U. S. 174, 181): The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of the statute, or from some provisions of it, or to qualify the operation of the statute in some particular. But it is often used in other senses. It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them to precede their proposed amendments with the term 'provided,' so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences."

The provision in the statute under consideration being intended to enlarge rather than limit the application of previous terms should not receive so narrow a construction as to defeat its purpose. It extends the terms of the act of February 11, 1903, to "any case" brought under the direction of the Attorney General in the name of the Interstate Commerce Commission. The second section of the act of February 11, has reference, it is true, to a suit in equity under certain acts wherein the United States is complainant, and the argument is that the extension of the terms of this act in the act of February 19 is only to suits in equity. But for some reason Congress, in the act under consideration, saw fit not to limit the terms of the extension to suits or proceedings provided for in section 3 of the act of February

19, or to suits in equity, but broadly extended the rights and privileges of the act of February 11, to "cases" of the character designated. We cannot assume that this use of the broader term was without purpose. Before the passage of this act this court had held that a petition filed under section twelve of the interstate commerce act against a witness duly summoned to testify before the commission, to compel him to testify or to produce books, documents and papers relating to the matter in controversy, makes a case or controversy to which the judicial power of the United States extends. (*Interstate Commerce Commission* v. *Brimson* 154 U. S. 447.) The object of construction, as has been often said by the courts and writers of authority, is to ascertain the legislative intent, and, if possible, to effectuate the purposes of the lawmakers. We cannot read these statutes without perceiving the manifest purpose of Congress to facilitate the disposition of cases brought under the direction of the Attorney General to enforce the provision of the anti-trust and interstate commerce statutes. The present proceeding is not merely advisory to the commission, but, as was said in *Interstate Commerce Commission* v. *Brimson*, *supra*, a judgment rendered will be a final and indisputable basis of action as between the commission and the defendant, and furnish a precedent for similar cases. While it has for its object the obtaining of testimony in aid of proceedings before the commission, it is evident that important questions may be involved touching the power of the commission and the constitutional rights and privileges of citizens. Congress deemed it imperative that such cases, affecting the commerce of the country as well as personal rights, should be promptly determined in a court of last resort.

If the appeal in the first instance was to the Court of Appeals the judgment of that court would not be final under the act of March 3, 1891, and in such case this court would still be required to consider the cases on final appeal. We think it was the purpose of the act to eliminate an appeal to the Circuit Court of Appeals and to permit the litigation to be shortened by a direct appeal to this court.

We pass now to the merits of the controversy. The record in this case is voluminous, and much of the discussion before the commission is printed. We shall endeavor to classify and consider the questions made so as to indicate our holdings with a view to a proper judgment in the case.

It is urged that the complainant before the commission did not show any real interest in the case brought, and that the proceeding should for that reason have been dismissed. It is provided in the act to regulate commerce, sec. 13, that "any person, firm, corporation," etc., complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act, in contravention of the provisions thereof may apply to said commission by petition, etc. And certain procedure is provided for—and (said commission) "may institute any inquiry on its own

motion in the same manner and to the same effect as though complaint had been made," and the section concludes: "No complaint shall at any time be dismissed because of the absence of direct damage to the complainant." In face of this mandatory requirement that the complaint shall not be dismissed because of the want of direct damage to the complainant, no alternative is left the commission but to investigate the complaint, if it presents matter within the purview of the act and the powers granted to the commission.

Power is conferred upon the commission, under section 12 of the act as amended March 2, 1889, and February 10, 1891, (3 U. S. Comp. Stat. of 1901, p. 3162,) to inquire into the management of the business of all common carriers subject to the provisions of the act, and to keep itself informed as to the manner and method in which the same is conducted, with the right to obtain from such common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created.

In making the orders which were the basis of the application to the circuit court and in the petition filed therein it is set forth that the commission at the time when the witnesses refused to produce the contracts required, was engaged "in the discharge of its duty to execute and enforce the provisions of the act to regulate commerce and in the exercise of its authority to inquire into the business of common carriers subject to the provisions of the act, and to keep itself informed as to the manner and method in which said business is conducted, and to obtain from said common carriers full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created; and your petitioner is of the opinion that said contracts are not only material and relevant to the issues on trial in said proceeding, but that the production thereof as required by it, as aforesaid, is necessary to enable your petitioner to discharge its duty and execute and enforce said provisions of said act to regulate commerce and to inform your petitioner as to the manner and method in which the business of said common carriers is conducted, and to enable your petitioner to obtain the full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created."

But in the present case, whatever may be the right of the commission to carry on an investigation under the general powers conferred in section 12, this proceeding was under the complaint filed, and we will examine the testimony offered with a view to its competency under the allegations made by the complainant.

Coming now to the specific items of testimony, which the Circuit Court in dismissing the petition considered irrelevant to the controversy, we will first consider the so-called coal purchase contracts.

It is unnecessary for the present purpose to go into detail as to the provisions of these contracts. In the main they were made with coal companies owned principally by the railroad companies, and contain the same general provisions. Among others, the purchase price of anthracite coal above a certain size is to be 65 per cent of the average price, computed monthly, at certain tide points, of coal of the same quality and size. All the coal mined by the contracting operators is sold, shipments to be made as called for by the purchasers.

While the contracts were produced for inspection, the witnesses refused to permit them to be given in evidence. The Circuit Court held them to be irrelevant upon the ground that they related solely to an intrastate transaction—the sale of the coal in Pennsylvania—and had nothing to do with interstate commerce. It appears that the railroad companies proceeded against in the complaint are engaged in carrying coal from the anthracite coal regions to tidewater. The contracts are between certain coal companies and independent operators engaged in mining coal in that region. The testimony shows that the coal companies making the contracts are principally owned by the railroad companies. For what purpose this separate ownership is maintained it is not necessary now to inquire. The fact of such ownership is undisputed, and for the present purpose it may be conceded that the ownership is lawful under the laws of the State of Pennsylvania.

The railroads are all engaged in interstate commerce, and into their affairs and methods of doing business the commission might be, and is, lawfully authorized by the commerce act to make investigation. In speaking of this power as undertaken to be vested in the commission, this court said in the Brimson case (154 U. S. 452): "It was not disputed at the bar, nor indeed can it be successfully denied, that the prohibition of unjust charges, discriminations or preferences by carriers engaged in interstate commerce, in respect to property or persons transported from one State to another, is a proper regulation of interstate commerce, or that the object that Congress has in view by the act in question may be legitimately accomplished by it under the power to regulate commerce among the several States. In every substantial sense such prohibition is a rule by which interstate commerce must be governed, and is plainly adapted to the object to be accomplished. The same observation may be made in respect to those provisions empowering the commission to inquire into the management of the business of carriers subject to the provisions of the act, and to investigate the whole subject of interstate commerce as conducted by such carriers, and in that way to obtain full and accurate information of all matters involved in the enforcement of the act of Congress. It was clearly competent for Congress, to that end, to invest the commission with authority to require the attendance and testimony of witnesses, and the pro-

duction of books, papers, tariffs, contracts, agreements and documents relating to any matter legally committed to that body for investigation."

In *Interstate Commerce Commission* v. *Cincinnati, New Orleans &c., Railway Co.*, (167 U. S. 479, 506,) this court held that the commission had no power to fix rates. In the course of the opinion it was said: "It [the commission] is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which the same is conducted."

The testimony shows that much of the coal purchased under these contracts is sold in Pennsylvania, but a considerable portion is carried to tidewater. The coal is purchased by companies owned by the railroads, for which payment is made on the basis of 65 per cent of the general average price received at tidewater by the sale of sizes above pea coal, leaving 35 per cent for the purchaser, from which he must pay transportation charges and cost of sale. Here is a railroad company engaged at once in the purchase of coal through a company which it practically owns and the transportation of the same coal through different States to the seaboard. Why may not the Interstate Commerce Commission, under the powers conferred, and under this complaint, inquire into the manner in which this business is done? It has the right to know how interstate traffic is conducted, the relations between the carrier and its shippers and the rates charged and collected. We see no reason why contracts of this character, which have direct relation to a large amount of its carrying trade, can be withheld from examination as evidence by the commission. These contracts were made by the officials of the railroad companies, who were also officials of the coal companies, after protracted conferences. Upon the ground that they pertained to the manner of conducting a material part of the business of these interstate carriers, which was under investigation, we think the commission had a right to demand their production. And, further, it was claimed that, while these contracts were in form purchases of coal, their real purpose was to fix a rate for transportation to the carriers, who were in fact paid for the only interest they had in the coal—the right to receive pay for its transportation —by the percentage retained from the selling price after deducting charges and expenses in marketing the coal.

It is to be remembered in this connection that we are not dealing with the ultimate fact of controversy or deciding which of the contending claims will be finally established. This is a question of relevancy of proof before a body not authorized to make a final judgment, but to investigate and make orders which may or may not be finally embodied in judgments or decrees of the court. If the railroad companies in fact received their compensation for carriage from the sum retained by the coal companies as

was claimed, then whether they realized more or less than their published rates depended upon the price of coal. Taking the prices at times as shown in the statements filed with the commission, it is apparent that the 35 per cent was less than published rates, and if that was the sum received for transportation, would work a discrimination against coal companies not having such contracts and paying the full rate. On the other hand, if the coal companies paid the full rate, and failed to realize as much from the percentage of the selling price retained they would be losing money, and as they were owned by the railroad companies the loss would be ultimately theirs and not the coal companies. It may be that the commission or the courts will ultimately find that these contracts do not fix the compensation received by the carriers, and that, as claimed, the full rate is paid by these purchasing companies, and if there is a loss on these contracts it is made up in other business; but, as we have said, the question concerns the relevancy of proof and not whether it finally establishes the issue made, one way or the other. Relevancy does not depend upon the conclusiveness of the testimony offered, but upon its legitimate tendency to establish a controverted fact. Relevancy is that "quality of evidence which renders it properly applicable in determining the truth or falsity of the matter in issue between the parties to a suit." (1 Bouvier Law Dic., Rawle's Revision, 866.)

The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegation and proof.

It is contended in the answers filed in the Circuit Court that to require the production of these contracts would be to compel the witnesses to furnish evidence against themselves which might result in forfeiture of estate in violation of the Fifth Amendment to the Constitution; would subject the parties to unreasonable searches and seizure of their papers contrary to the Fourth Amendment, and would require them to produce papers pertaining wholly to intrastate affairs in violation of the reserved rights of the people of the States, and beyond the power of the commission, whose duties are limited to investigations pertaining to interstate commerce.

At the hearing the constitutional objections do not seem to have been relied upon; those argued pertained to the relevancy of the proof and the rights of persons not before the court to be protected from the publication of their private contracts. As to the constitutional objection based upon the Fifth Amendment, the act as amended February 11, 1893, expressly extends immunity from prosecution or forfeiture of estate because of testimony given in pursuance of the requirements of the law. The full con-

sideration of the subject and the decision of this court in *Brown* v. *Walker*, (161 U.S. 591,) renders further consideration of this objection unnecessary.

The origin and interpretation of the Fourth Amendment to the Constitution, securing immunity from unreasonable searches and seizures, was fully discussed by Mr. Justice Bradley in the leading case of *Boyd* v. *United States*, (116 U. S. 616.) In that opinion the learned Justice points out the analogy between the Fourth and Fifth Amendments, and the object of both to protect a citizen from compulsory testimony against himself, which may result in his punishment or the forfeiture of his estate, or the seizure of his papers by force, or their compulsory production by process for the like purpose. In the course of the opinion it is said: "Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." And see *Adams* v. *People of the State of New York*, decided at this term.

As we have seen, the statute protects the witness from such use of the testimony given as will result in his punishment for crime or the forfeiture of his estate. Testimony given under such circumstances presents scarcely a suggestion of an unreasonable search or seizure. Indeed, the parties seem to have made little objection to the inspection of the papers, the contest was over their relevancy as testimony. Nor can we see force in the suggestion that these contracts were made with persons not parties to the proceeding. Undoubtedly the courts should protect nonlitigants from unnecessary exposure of their business affairs and papers. But it certainly can be no valid objection to the admission of testimony, otherwise relevant and competent, that a third person is interested in it.

As to the so-called Temple Iron Company contracts: It appears that in 1889 certain operators in the anthracite coal region organized a competing railroad, with a view to carrying their product from the coal regions to market at tidewater. It became evident that this company was likely to succeed, and to construct a competing railroad from the coal fields to the sea. With a view to acquiring its property, five of the leading railroad carriers purchased the collieries whose proprietors were developing the new scheme. To pay for these the charter of the Temple Iron Company was purchased and its capital stock increased. The company issued a large amount of stock and bonds, and the contracting railroad companies agreed among themselves and with the Guaranty Trustee Company of New York, as trustee, to guarantee a six per cent dividend upon the Temple Iron Company stock and the payment of principal and interest of the bonds. This ended the building of an independent line, and the trans-

portation of coal from the collieries is distributed among the carriers interested.

It is argued that these contracts, if given in evidence, will tend to show a pooling of freights, in violation of the fifth section of the commerce act. While this testimony may not establish such an arrangement as is suggested, it has, in our opinion, a legitimate bearing upon the question. There is a division of freight among several railroads, where, by agreement or otherwise, the companies have a common interest in the source from which it is obtained. Furthermore, we think the testimony competent as bearing upon the manner in which transportation rates are fixed, in view of determining the question of reasonableness of rates, into which the commission has a right to inquire. To unreasonably hamper the commission by narrowing its field of inquiry beyond the requirements of the due protection of rights of citizens will be to seriously impair its usefulness and prevent a a realization of the salutary purposes for which it was established by Congress.

An appeal is also prosecuted from the refusal of the Circuit Court to order the witnesses Eben B. Thomas and William H. Truesdale to answer certain questions respecting the prices and sale of coal. Upon the principles already discussed we think these questions had legitimate bearing upon the matters into which the commission was making inquiry.

We are of the opinion that the Circuit Court erred in holding the contracts for the purchase of coal by the companies or directly by the railroad, where a percentage of the price was agreed to be paid for the coal, to be irrelevant, and in refusing to order their production as evidence by the witnesses who are parties to the appeal, and likewise erred as to the Temple Iron Company contracts, and in refusing to require the witnesses aforesaid to answer the questions stated in the petition, and the order appealed from is reversed, and the cause is remanded to the Circuit Court for further proceedings in accordance with this opinion.

Mr. Justice BREWER dissents.

True copy.

Test:

Clerk Supreme Court, U. S.